

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(SPECIAL ORIGINAL JURISDICTION)

Present

Mr. Justice Sikder Mahmudur Razi

And

Mr. Justice Raziuddin Ahmed

Writ Petition No. 7944 of 2011

Nipun Enterprise

.....Petitioner.

-Versus-

Secretary, Ministry of Primary and Mass
Education of Bangladesh Secretariat, Dhaka and
others.

.....Respondents.

None appears

.....For the petitioner.

Mr. Hafizur Rahman Khan, Advocate

.....For the respondent No. 4.

Mr. Mohammad Mehdi Hasan, DAG with

Mr. Mohammad Rashadul Hassan, DAG with

Mr. Kamrul Islam, AAG with

Mr. Md. Shagar Hossain, AAG with

Mr. Bishwanath Karmaker, AAG with

Mr. S.K. Obaidul Haque (Wasim), AAG

....For the respondents

The 09th December, 2025

This is an application for discharging Rule.

Rule Nisi was issued in the instant writ petition in the following
terms:

*Let a Rule Nisi be issued calling upon the respondents to show
cause as to why the letter dated 07.09.2011 being Memo No.
OBL/Kakrail/Credit/2011/358 issued by the respondent no. 7
pursuant to letter dated 07.09.2011 issued by the respondent no. 6
requesting the petitioner to make payment of the Performance
Guarantee being No. BG/PG/KB/134/2010 dated 16.09.2010*

furnished by the petitioner for an amount of Tk.16,77,806/- in favour of respondent no. 4 as per terms of contract dated 26.09.2010 for supply of 1997 metric tons white printing paper, shall not be declared without lawful authority and is of no legal effect and/or such other or further orders passed as this Court may seem fit and proper.

Mr. Hafizur Rahman Khan, learned Advocate for the respondent No. 4-applicant submits that the relevant contract between the petitioner and the National Curriculum and Textbook Board (NCTB) is of commercial nature. The learned advocate next submits that in order to attract the jurisdiction under article 102 of the Constitution in respect of its breach or violation, the contract must be statutory or made in exercise of the sovereign power of the Government functionaries. The remedy for breach of contracts of a general commercial nature, entered into in the course of trade or for commercial purposes, lies in instituting a civil suit before the competent Civil Court or before such forum as may be specifically provided for in the contract itself. Consequently, the instant writ petition is not maintainable.

He next submits that the Agreements dated 26.09.2011 clearly mentioned that the General Conditions of Contract (GCC) and Particular Conditions of Contract (PCC) will form part of the agreement. Clause 47.1(a) of GCC provides for amicable settlement of disputes between the parties, whereas, Clause 47.2 requires disputes to be settled by jointly appointed Adjudicator in the event amicable settlement is not possible.

Further, Clause-47.3 also provides for settlement of disputes by arbitration if settlement is not reached under Clause 47.1(a). However, the Petitioner, without exhausting the said alternative forums of settlement, initiated the instant Writ Petition and as such the same is not maintainable.

No one appears to oppose the application although copy of the same was duly served.

We have heard the learned Advocate for the respondent No.4-applicant. We have gone through the writ petition, the application and materials on record.

The foremost question is whether the present dispute arising from a commercial supply contract between the petitioner and the National Curriculum & Textbook Board (NCTB) can be adjudicated in the writ jurisdiction. It is well-settled that not every contract involving a government entity qualifies for judicial review under Article 102 of the Constitution. The courts have drawn a clear line between ordinary contracts and those imbued with statutory or sovereign character.

In *Sharping Matshjibi Samabaya Samity Ltd. v. Bangladesh, & others*, reported in 39 DLR (AD) (1987) 85, the Appellate Division emphasized that a contract does not become a statutory contract merely because a public functionary is a party; unless the terms of the contract are attached in statute or involve an exercise of sovereign power, any breach remains a matter of private law. In the case of *Bangladesh Power*

Development Board and others-vs-Asaduzzaman Sikder, reported in 9 BLC (AD) (2000) 1 it has been held that "A person can invoke writ jurisdiction in breach of contract when (a) the contract is entered into by the Government in the capacity as sovereign, (b) contractual obligation arises out of statutory duty or sovereign obligation or public function of a public authority, (c) a statutory contract, (d) the contract was entered into by the public authority invested with a statutory power, (e) the relief sought is against breach of statutory obligation. Similarly, in *ARK Associates Ltd. And others v. The Chairman, Board of Directors of Dhaka Water Supply and Sewerage Authority and others*, reported in 19 BLD (HCD) 349, the High Court Division held that disputes arising out of "an ordinary commercial contract" with a statutory body must be pursued in the civil courts and not through a writ petition. The rationale is that claims of breach of contract or issues arising out of contract typically involve examining facts and contractual obligations, which is the domain of the civil courts or the forum as laid down in the contract itself.

By contrast, when a contract is entered into by the government in the exercise of a statutory function or duty, the scenario changes. If the terms of the agreement are dictated by statute or the contract is inherently connected to sovereign functions, the courts have treated it as a public law matter open to judicial review. The contract at hand which was for supply of 1,997 metric tons of white printing paper to NCTB, bears no such statutory character. It was a procurement contract entered

through a commercial tender process, and its terms were not mandated by any statute. NCTB, though a state body, was acting in its capacity as a purchaser of goods, essentially a trading function rather than enforcing any sovereign policy or statutory scheme in the formation of this contract. There is no allegation that the contract was anything other than a standard supply agreement for goods. In short, the present dispute involves breach of a general commercial contract, which falls squarely in the realm of private law remedies.

Given this nature of the contract, we are of the view that the writ jurisdiction under Article 102 cannot be invoked to resolve what is essentially a contractual claim. The petitioner's proper avenue for relief lies in a suit or other appropriate forum stipulated by the contract, rather than a constitutional writ. To allow a writ petition in such circumstances would enlarge the scope of Article 102 beyond its intended purpose. The constitutional jurisdiction is principally available to ensure lawful exercise of public authority and protection of legal rights, not to enforce private contractual rights. Even if a government entity is a party, a simple contractual right cannot be enforced against a public functionary through writ unless some public law element is involved. Here, no violation of any statutory duty or fundamental rights by the respondents has been demonstrated. Therefore, as per settled principle of law, a writ petition cannot be founded merely on contract in absence of a public law ingredient.

We also take note of the dispute resolution clauses i.e. Clause-47 in the contract, which provided for a stepwise mechanism: amicable settlement, adjudication by a jointly appointed Adjudicator, and ultimately arbitration (Clause 47.1(a), 47.2 and 47.3 of the General Conditions of Contract). By entering into the agreement, the petitioner committed to resolve any disputes through these forums. It is apparent that the petitioner bypassed these contractual remedies and directly approached this Court. Such conduct raises the issue of exhaustion of alternative remedies.

It is a well-established principle that the High Court Division, in exercise of its writ jurisdiction, will ordinarily refrain from intervening when an equally efficacious alternative remedy is available to the petitioner. In the present case, the petitioner has not shown any exceptional circumstance that would justify invoking the writ jurisdiction without pursuing the agreed remedy as contained in Clause 47 of the General Conditions of Contract.

In light of the foregoing discussion, we are of the view that, the writ petition is not maintainable. The contract in question is a general commercial contract lacking any statutory or public law element that would attract jurisdiction under Article 102 of the Constitution.

As such, we find merit in the instant application for discharging the Rule. In the result, the Rule is discharged without any order as to cost. The interim order passed at the time of issuance of the Rule is hereby recalled and vacated.

Communicate the judgment to the concerned authority, at once.

I agree

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(Sikder Mahmudur Razi, J.)

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(Raziuddin Ahmed, J.)