

FOCUS

Budget 1996-97: Constitutional Choice and Political Propriety

by Mohiuddin Ahmed

THE non-party caretaker government is preparing the budget for 1996-97 and the revised budget for 1995-96 in a set of unique circumstances. It was not responsible for deviations of expenditures from the budget for 1995-96 which will be included in the revised budget; it will not be responsible for the expenditures which will be incurred during 1996-97; yet, the caretaker government has to prepare both budgets. The unique circumstances differentiate the ongoing task of budget preparation from other years in many critical respects — constitutionally as well as politically. The government will do well to address these issues well in advance in its budgetary exercise so as to avoid any doubt about constitutional and, more crucially, political propriety of the budget exercise.

The Budget Dilemma: The budget of the government is a statement of its income and expenditure during a financial year. This view is not wrong, but rather simple and naive. We consider the budget as the most important document setting out government's policies and methods for their implementation. The budget prepared by the caretaker government and the civil servants cannot reflect the policies and commitments of the government which will be elected on June 12. The present government can at best prepare and get approved a budget while will allow the elected government to incur the necessary expenditure which it addresses itself to the task of budget preparation based on its policies and commitments.

It may take a week or so for official announcement of the June 12 election results. It is expected that by the second week or early third week of June, there will be a Prime Minister and a Cabinet in the country. A much too finely balanced hung parliament may require longer time to form government, but the budgetary problem will be the same. The financial year comes to an end on June 30, 1996. Payments which fall due from July 1, 1996, cannot be made unless the budget is approved within 30th June. No payment can be made even for cheques issued towards the end of the financial year unless the budget is approved and contains provision for liquidation of these claims. But, the elected government will have no time to prepare the budget nor will the parliament have time to approve it in June.

The budget dilemma this year arises from the tight time schedule as well as the division of power among the executive branch of the government, the President and Parliament. The government has to obtain Parliament's approval for the expenditure required for the whole year as well as approval for any new tax, levies, etc.

Estimates of both expenditure and receipt are presented in the annual financial statement (the term used in the Constitution for budget). Parliament enacts an appropriation act which allows the government to withdraw money from the Consolidated Fund — an account into which all receipts of government are deposited — to meet the approved expenditures; similarly a Finance Act allows the government to impose new tax measures. No proposal for expenditure or tax can be submitted to Parliament without President's approval; the Appropriation Act and the Finance Act become effective after receiving President's authentication. He can sometimes authorise expenditure not included in the approved budget, but such expenditures are to be submitted to Parliament for approval.

ment which makes the necessary grants and finally all these amounts have to be incorporated in the budget submitted for Parliament's approval. The ultimate control over expenditure of public money vests with Parliament. [Articles 83, 84, 85, 87, 89 and 90]

Vote on Account — a Questionable Choice: Vote on account is the usual choice of government to obtain authorisation of expenditure from the Parliament while debate on the total budget continues. Under this provision of the Constitution, the government submits to the Parliament estimated demand for grants for the whole year and requests that the parliament give advance authorisation for spending a part of the amount demanded. A corresponding appropriation act is also passed. The amount authorised under vote on account eventually forms part of the annual budget and appropriation approved by the Parliament. [Article 92(1)(a) and 92(2)]

Vote on account does not seem to be the appropriate solution to the present dilemma. It presumes that the budget for the whole year is submitted to the Parliament. Since the Parliament wants to discuss government policies and the budget more critically which takes a long time without disrupting normal government activities, it authorises a portion of the total demand for the whole year. Vote on account presupposes submission of budget for the whole year. The caretaker government cannot expect that the succeeding political government will endorse the budget prepared by it. Moreover, neutrality of the caretaker government enjoins that it does not anticipate the winner and bases budget on its policy agenda.

Past Excess Expenditure is Not the Responsibility of Caretaker Government: Many adjustments are made to budget — usually to expenditure during the course of the financial year. These are regularised through constitutional provisions relating to supplementary grants and excess grants. When the government needs to spend more money on a service than the amount already authorised by the parliament, it has to obtain supplementary grant from the parliament. Similarly, if the government wants to spend money on a service or activity for which no provision exists in the approved budget, the government has to obtain authorisation from the parliament for a specific sum. The President may authorise the expenditure subject to the condition that the government places before the parliament a supplementary financial statement setting out the estimated amount of the expenditure for its approval. [Article 91(a)]

There are occasions when the government may have to incur expenditure on a service or activity in excess of the amount provided in the approved budget and the nature of the expenditure is such that the government cannot wait for approval of the parliament. The President can authorise the expenditure subject to the condition that the government places before the parliament an excess financial statement setting out the amount of excess for post facto approval [Article 91(b)]. Such expenditures can be incurred only on services or activities which have already been approved and not on services or activities for which no provision exists in the approved budget. Since the parliament sessions are held at intervals not exceeding 60 days, there would be very rare occasions when the government has to spend money without obtaining par-

The author argues that the caretaker government should prepare a minimalist budget based on the existing policies and programmes which can facilitate transition to the elected government in accordance with Article 92(3) of the Constitution. The elected government can then deal with its own budget for 1996-97 and supplementary budget incorporating all excess expenditures for 1995-96. The President can now only authorise excess expenditure that the caretaker government has to incur; retroactive authorisation of excess expenditure is constitutionally dubious. Approval of the revised estimates for 1995-96 by the President in lieu of the Parliament is an infringement of the Constitution.

liamentary approval. These would be very rare cases of emergencies — such as natural disaster, internal or external threat to the country, etc. The parliamentary procedure for making excess grant — i.e., post facto authorisation of excess expenditure — is based on the principle of financial accountability of the executive branch of the government to the parliament. The Auditor General includes all cases of excess expenditures in his annual report which are examined by the Public Accounts Committee (PAC). The government places before the parliament proposals for approval of all excess expenditures with the observations or recommendations of the PAC.

The constitutional distinction takes on a critical significance in the present context. In most years, there is continuity of government which got the budget for the current year approved by the parliament, incurs excess expenditure which is included in the revised budget and submits to the parliament the proposed budget for the coming year. The government can rely on its majority in the parliament to approve the excess expenditures regardless of whether it conforms with the Constitution and the principle of accountability. This time, however, several governments were involved in execution of budget during 1995-96. First, there was the government of Prime Minister Khaleda Zia; then there was the caretaker government under Begum Zia when the parliament was dissolved. Second, there was Be-

penditure. Such power, however, can be exercised only when Parliament stands dissolved. An ordinance which authorises expenditure of government money has to be laid before the parliament at the soonest possible; and within 30 days after it is so laid the parliament has to approve the ordinance. In approving the ordinance authorising expenditure, the parliament follows the procedure applicable for approval of annual financial statement and Appropriation Act [Articles 93 (3 and 4), 87, 89, 90].

It is difficult to visualise how the non-party caretaker government or its immediate elected successor will use an ordinance to approve a budget. Apparently, it will be quite an anomalous approach, given that we will have an elected government then. However, if this method has to be used at all, certain sensitive aspects of the exercise need to be kept in view.

First, election to the national assembly will be completed and the new government formed within June. If the caretaker government were to use this approach at all, it has to be done before the election is completed; the rush will be rather odd. It will be equally odd for an elected government to have the President issue an ordinance — that also for budget — soon after it enters office. Time is the essential constraint. To dramatise the point, just imagine the Finance Adviser reading out the budget so approved by an ordinance to a gathering of invited dignitaries; the scene is too despicably reminiscent of Finance Ministers or Finance Advisers of martial law regimes announcing a budget.

The non-party caretaker government may encounter reluctance — if not resistance — from two quarters mainly. The first group consists of government bureaucracy and politicians who participated in the process of incurring excess expenditure and benefited from it. The second group comprises suppliers, contractors, indentors, etc. who benefited from contracts awarded by the government.

Second, the budget approved through Presidential ordinance will have to be placed before the parliament as soon as it is constituted and in the first session which can be expected within June or latest by first week of July. It will be the duty of the elected government to take the budget to the parliament for approval — i.e. the elected government has to own the budget prepared by the non-party caretaker government — at least to start with. We have shown before why the caretaker government cannot prepare budget for the elected government.

Budget Not by Ordinance, If You Can Help It: The ordinance making power of the President includes authorisation of ex-

penditure allowing the President to authorise expenditure for four months on his own — and without advice of the Prime Minister. [Article 92A, now replaced, was inserted by second proclamation order no. IV in 1978]. This combines some of the features of budget by ordinance and vote on account. It empowers the President to authorise expenditure only after the budget has been placed before the parliament and on the recommendation of the Prime Minister. This control of the parliament is secured while allowing the government to carry on even when parliamentary sanction takes time. If the government fails to obtain budget approval at the end, it has to quit.

Third, if the caretaker government at all wants to use President's ordinance making power for approval of budget, it ought to be limited to the minimum expenditure for the shortest period which the elected government will need to prepare its own budget.

Finally, President's power can be exercised for authorising expenditure only when the parliament stands dissolved and the President is satisfied that circumstances exist which make such an ordinance necessary. This power cannot be exercised for authorising expenditure already incurred or when the parliament is in existence. [Article 93(3) and 93(4)] This would limit the use

of a budget-ordinance only for the excess expenditure incurred by the non-party caretaker government during its tenure.

President Acts on Prime Minister's Advice: Rejection of vote on account and ordinance authorising expenditure as under a martial law regime leaves us in a blind alley, so to say. The ideal solution out of this dilemma is combination of authorisation of expenditure for some time so that the government can function and making such authorisation dependent upon wishes of the elected government. Fortunately, the Constitution provides for that. On the advice of the Prime Minister, the President may by order authorise withdrawal of money from the Consolidated Fund to meet expenditure mentioned in the financial statement for that year in the following circumstances: (i) When the parliament fails to make grant and enact the appropriation law before the commencement of the financial year; (ii) When the Parliament fails to make grant in advance under vote on account procedure to meet expenditure for part of the year pending approval of the budget for the whole year; and (iii) When the parliament fails to approve the budget for the year and enact the appropriation law before expiration of the period for which vote on account was taken. Authorisation of expenditure under this provision can be made for a period not more than 60 days. [Article 92 (3)]

This provision was inserted by the Twelfth Amendment which replaced an earlier

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ment for which have been concluded or are scheduled to be concluded in the course of the year. These measures are expected to give a fiscally viable programme along with higher level of absorption of available foreign savings.

Revised Budget 1995-96 and Some Constitutional Issues: The Government approved the revised budget for 1995-96 on May 16, 1996, which includes supplementary and excess expenditures incurred during the year — mostly before the caretaker government assumed office. According to the news report, the government got the revised estimates approved separately and is preparing an 'interim budget' for the next government. [The Daily Star, April 17, 1996]. Two aspects of budget remain unclear from government's announcement: the meaning of interim budget and the period to be covered; second, whether the revised estimates will be submitted to the Parliament or not. The government gives the impression that the interim budget may cover only part of the year and that the revised estimates for 1995-96 need not be a course of questionable propriety.

We summarise here why the government may go wrong at the risk of repeating some points made earlier. First, the power to approve the budget for expenditure — including revised budget — vests in Parliament. The President only recommends the proposals for submission to Parliament but cannot act as its substitute. [Article 87, 89 (2 and 3), 91]. Second, excess expenditure can be incurred only on activities for which budget provision exists but is insufficient. The President may authorise such expenditure before sanction by the Parliament but a statement of the amount of excess before the Parliament of approval [Article 91 (b)]. The excess expenditure already incurred needs to be approved by the Parliament. If excess expenditures have already been approved without approval of the President, it is doubtful if the mistake can be corrected retroactively. Third, supplementary grant needs prior approval of the Parliament. [Article 91(a)]. The administrative and legislative practices in Bangladesh treat excess grant and supplementary grant in the same way which is untenable in the present context, however, such a mix-up is condonable. Fourth, Parliament can allow expenditure for part of the year through vote on account only on the basis of annual financial statement pending in the House. Similarly, on the advice of the Prime Minister the President can authorise expenditure for a period up to 60 days if the Parliament fails to pass the budget before commencement of the financial year or before expiry of the period for which vote on account has been taken. Submission of annual budget is obligatory under the Constitution. Fifth, the President can issue an ordinance authorising expenditure and withdrawal of money from the Consolidated Fund only when the Parliament stands dissolved and conditions justify issue of an ordinance [Article 92 (3)]. The President cannot issue an ordinance now for excess expenditures already incurred while the Parliament was in existence.

In sum, the caretaker government can obtain President's approval for excess and arguably supplementary expenditure that it has to incur now; the entire amount of excess and supplementary expenditure including those incurred earlier has to be incorporated in the revised estimates and submitted to the Parliament for approval. As to 1996-97, the government has to prepare the annual financial statement — i.e. budget for the whole year; there is no provision for budget for part of the year in the Constitution.

Constitutional and Political Propriety of Budget 1996-97: Preparation of the budget by the non-party caretaker government is a complex task because it cannot own all the excess and questionable expenditures incurred by the governments which held office during 1995-96 nor can it anticipate or commit to the policy agenda of the successor elected government. It is difficult but not an impossible task provided the government defines clearly the 'rules' of constitutional and political propriety. Within this framework of propriety, the tasks are clear: First, the non-party caretaker government prepares the budget only for facilitating transition to the next elected government. It prepares the annual financial statement for compliance with the constitutional provision in a strictly narrow technical sense — i.e. to show the likely resource available and the expenditure which must be incurred. It will be a 'minimalist budget'. The elected government will use the breathing period to prepare and present to the Parliament its own budget.

Second, the elected government will use the 'minimalist budget' based on status quo assumption either to take a vote on account or secure President's authorisation for expenditure for a limited period of time. This will allow the victorious party time to work out its own budget.

Third, the caretaker government must avoid the process for securing legislative sanction for expenditure in excess of the approved budget incurred by the governments which held office during 1996-97. It must be left to the elected government. Audit of all excess expenditures and examination by the PAC will establish more effective accountability common to parliamentary systems.

Fourth, the government must avoid committing to policies or new expenditure programmes which will be entirely within the domain of the elected government, regardless of whichever party wins. Fifth, the government has to judge finely about the level of domestic borrowing since it will put on the next government or government's obligation to adjust its taxes and expenditures. The caretaker government may avoid domestic debt for financing expenditure but excluding saving instruments and government provident fund which are more for ensuring safe investment and attractive return to small sav-

ings. While the above present a constitutionally sound and politically responsible budgetary strategy, the non-party caretaker government may encounter reluctance — if not resistance — from two quarters mainly. The first group consists of government bureaucracy and politicians who participated in the process of incurring excess expenditure and benefited from it. The second group comprises suppliers, contractors, indentors, etc. who benefited from contracts awarded by the government. If the non-party caretaker government can establish a higher standard of financial accountability and parliamentary control over government expenditure, it will have served well its essential social mandate.

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