

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,
Chief Justice
Mr. Justice Muhammad Imman Ali
Mr. Justice Hasan Foez Siddique
Mr. Justice Mirza Hussain Haider
Ms. Justice Zinat Ara
Mr. Justice Abu Bakar Siddiquee

CIVIL REVIEW PETITION NO.40 OF 2019.

(From the judgment and order dated 01.08.2018 passed by the Appellate Division in Civil Petition for Leave to Appeal No.2632 of 2018.)

Government of Bangladesh represented by Petitioners.
the Secretary, Finance Department,
Ministry of Finance, Bangladesh
Secretariat Building, P.S.Shahabagh,
Dhaka and others :

=Versus=

Md. Salim Khan : Respondent.

For the Petitioners : Mr. Mahbubey Alam, Attorney
General (with Mr. Biswajit
Debnath, Deputy Attorney
General), instructed by Mr.
Haridas Paul, Advocate-on-
Record.

For the Respondent : Mr. Ajmalul Hossain, Senior
Advocate (with Mr.
Moniruzzaman Asad,
Advocate) instructed by Mr.
Madhumaloti Chowdhury
Barua, Advocate-on-Record.

Date of hearing : 04-04-2019

J U D G M E N T

Hasan Foez Siddique, J: This civil review
petition is directed against the judgment and
order dated 01.08.2018 passed by this Division in
Civil Petition for Leave to Appeal No.2632 of
2018 dismissing the same as being time barred.

The relevant facts, for the disposal of this petition, are that the writ petitioner-respondent filed Writ Petition No.1319 of 2018 in the High Court Division for a direction to get release of Tk.704.15 lac instead of 2369.57 metric tons of wheat for completion of 1000 metres emergency temporary embankment on the bank of the river Meghna adjacent to the village Gokkhurdi Char for protection of the said village under No.10 Laxmipur Model Union, Chandpur Sadar Upazilla, Chandpur from the erosion of the Meghna River and Tk.1433.03 lac instead of 4822.38 metric tons of wheat for completion of 2000 metres emergency temporary embankment on the bank of the river Meghna adjacent to the village Harina for protection of the said Village under No.10 Laxmipur Model Union, Chandpur Sadar Upazilla, Chandpur. It was stated in the writ petition that Dr. Dipu Moni, Member of Parliament of No. 262, Chandpur-2 Constituency, by a letter, requested the Deputy Commissioner, Chandpur District to prepare a budget for permanent protection of Harina and Gokkhordi area from erosion of the river Megna and to communicate the same to the Project Director, Asrayan Prokolpo-2, Office of the Prime Minister, Dhaka. Upon receiving the letter from Member of the Parliament, the Deputy

Commissioner, Chandpur, by a letter dated 02.03.2017, requested the Upozilla Nirbahi Officer to prepare a budget for the said work for protection of some Asrayan Projects (Annexure-11) situated at Harina and Gokkhordi Mouza. The Upazilla Nirbahi Officer, by a letter dated 15.03.2017, requested the Executive Engineer, Water Development Board, Chandpur for preparation of budget for the said works. The Deputy Commissioner, by letter dated 26.04.2017 also formed a five members committee headed by the Executive Engineer, Water Development Board, Chandpur for physical inspection of the areas. After holding inspection, Upozilla Nirbahi Officer, by letter dated 18.08.2017, informed the Project Director, Asrayan Prokolpo-2, Office of the Prime Minister that the river is very close to those Asrayan Projects and in order to protect the Asrayan projects on the bank of the Meghna river embankment is necessary on emergency basis. The Executive Engineer, by letters dated 24.08.2017 and 29.08.2017, informed the Deputy Commissioner, Chandpur about preparing two separate budgets for carrying out (i) 1000 metres emergency temporary river bank work on the left bank of the Meghna River adjacent to Gokkhurdi Char Village for 'protection of Gokkhurdi Char

Village area at Gokkhurdi Mouza and (ii) 2000 metres emergency temporary river bank work on the left bank of the Meghna River adjacent to Harina Village for protection of Harina Village area at Harina Mouza from erosion of the river Megna.

Upon receiving the said letter, the Deputy Commissioner, by letter dated 05.09.2017, requested the Project Director, Asrayan Prokolpo-2, Office of the Prime Minister to take necessary steps accordingly for temporary emergency works of the bank of Meghna River and informed that those 2 (two) estimated budget have been prepared for completing 2000 metres work on the bank of Meghna River adjacent to Harina Mouza and 1000 metres work on the bank of Meghna River adjacent to Gokkhurdi Mouza. Upon receiving the said letter from the Deputy Commissioner, Director-II, Office of the Prime Minister, by letter dated 24.09.2017, requested the Senior Secretary, Ministry of Water Resources to take necessary steps accordingly. Senior Secretary, Ministry of Water Resources, by a letter, requested the Secretary, Finance Division, Ministry of Finance to release 7191.95 metric tons of wheat for completing 3000 metres work on the bank of the Meghna River. The Director-4, Office of the Prime Minister, by a letter, informed the

Secretary, Ministry of Relief and Disaster Management that the Prime Minister has agreed to release Tk.2137.18 lac instead of 7191.95 metric tons of wheat for completion of said works. The Deputy Secretary, Finance Department, Ministry of Finance by two separate letters requested the Senior Secretary, Office of the Prime Minister and Senior Secretary, Ministry of Relief and Disaster Management to send opinion for releasing Tk.2137.18 lac instead of 7191.38 metric tons of wheat. Upon receiving the said letter, a Deputy Secretary, Ministry of Relief and Disaster Management by a letter requested the Director General, Disaster Management Adhidapar to take necessary steps. Joint Secretary, Ministry of Relief and Disaster Management by a letter requested the writ respondents to sanction equivalent Tk.2137.18 lacs only instead of 7191.95 metric tons of wheat for completion of the said work.

In such a situation, the writ petitioner served notice demanding justice but did not get any reply. At this juncture, the writ petitioner, filing writ petition under article 102 of the constitution, obtained the present Rule.

The High Court Division upon hearing the parties, made the Rule absolute on 22.03.2018

directing the Ministry of Relief and Disaster Management to release (i) the equivalent amount of Tk.704.15 lac (taka seven hundred and four point 15 lac) only instead of 2369.57 metric tons of wheat for completion of 1000 metres emergency temporary river bank work on the left bank of the Meghna River adjacent to Gokkhurdi Char Village for protection of Gokkhurdi Char Village area and (ii) the equivalent amount of tk.1433.03 lacs only instead of 4822.38 metric tons of wheat for completion of 2000 metres emergency temporary river bank work on the left bank of the Meghna River adjacent to Harina Village for protection of Harina Village from the erosion of the Meghna River within 30 (thirty) days from the date of receipt of this judgment and order.

Against the said judgment and order of the High Court Division dated 22.03.2018 passed in Writ Petition No.1319 of 2018, the Government and others have filed Civil Petition for Leave to Appeal in this Division which was dismissed as being time barred. Thus, the Government and others have filed this civil review petition.

Mr. Mahbubey Alam, learned Attorney General appearing on behalf of the petitioners, submits that this Division has committed an error of law apparent on the face of the record in dismissing

the leave petition inasmuch as the High Court Division acted without jurisdiction in making the impugned direction upon the executive inasmuch as the impugned decisions are policy decisions of the Government.

Mr. Ajmalul Hossain, learned Senior Counsel appearing on behalf of the respondent, submits that the High Court Division within its competency passed the impugned direction since the Government instrument earlier by different letters felt necessity of the two projects and accordingly sanctioned money instead of wheat for those two projects. The High Court Division, considering the materials on record, rightly passed the impugned directions.

In this case, the question is whether the High Court Division exceeded its jurisdiction to make the impugned direction to the Government.

The decisions and steps taken for protection of the villages from the erosion of the river Meghna are totally executive decisions of the Government. The policy decision of the Government may be interfered with only when the same is illegal or unconstitutional or shockingly arbitrary in the wednesbury sense. It is the duty of the policy maker to decide how a village would be protected from erosion of a river and what

would be the acceptable proposal for embankment works and what would be the proper way of implementation of proposal of embankment considering the financial capacity of the Government.

The constitution has demarcated the limitation of the Executive, Legislature and Judiciary for exercising their respective jurisdictions and one can not transgress the authority ignoring the constitutional limitation. The scope of judicial enquiry over the subject matter in issue is limited. If the decision taken by the Government is against the statutory provisions or is violative of the law then only the High Court Division can examine the same, but it is absent in this case.

In the instant case, in fact, the High Court Division, ignoring constitutional limitation directed the executive to sanction money instead of wheat for protection of the above mentioned villages from erosion of the river Megna. Our considered view is that the impugned judgment and order passed by the High Court Division was unlawful. This Division committed an error of law apparent on the face of the record in not interfering with the judgment and order of the High Court Division on merit.

Since both the parties are present in this Court through their respective learned Counsel and the learned Counsel for the respondent made his submissions supporting the respondent's case, we are of the view that it would unnecessarily delay in disposal of the matter, if we grant leave.

Thus, the review petition is disposed of. The order of this Division is accordingly reviewed and set aside. The judgment and order of the High Court Division dated 22.03.2018 in Writ Petition No.1319 of 2018 is also set aside.

C. J.

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The 4th April, 2019.

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