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

WRIT PETITION NO.274 of 2024

IN THE MATTER OF:

An application under Article 102 of the Constitution of the People's Republic of Bangladesh

And

IN THE MATTER OF:

Bangladesh Tax Lawyers' Association (BTLA) and another

..... Petitioners

-vs-

The National Board of Revenue (NBR) and others.

...Respondents

And

Mr. Shah Monjurul Hoque, Senior Advocate with
Mr. Palash Chandra Roy, Advocate with
Mr. Muhammad Harunur Rashid, Advocate with
Ms. Syeda Shathi Sultana, Advocate with
Mr. Md. Anowar Hossain, Advocate with
Ms. Bilkiss Rahman Bellie, Advocate and
Ms. Tamanna Sultana, Advocate
..... For the petitioners

Mr. Samarendra Nath Biswas, D.A.G. with
Mr. Md. Abul Kalam Khan (Daud), A.A.G. with
Mr. Md. Modersher Ali Khan (Dipu), A.A.G. and
..For the Respondents-government.

Heard on: 09.05.2024, 15.05.2024, 21.05.2024, 26.05. 2024, 28.05.2024, 29.05.2024
and Judgment on: 11.06.2024

Present:

Mrs. Justice Farah Mahbub
And
Mr. Justice Muhammad Mahbub Ul Islam

Farah Mahbub, J:

Challenging the "আয়কর রিটার্ন প্রস্তুতকারী বিধিমালা, ২০২৩" (in short, the Rules, 2023) framed by the National Board of Revenue (in short, NBR) in

exercise of power as provided under Section 343 of the "আয়কর আইন, ২০২৩" (Act No.12 of 2023) (in short, Ain, 2023) published in gazette on 26.06.2023 vide S.R.O. No.২০৭/আইন/আয়কর-০২/২০২৩ (in short, S.R.O. No. 207) dated 26.06.2023 (Annexure-B) the petitioners, the respective Associations being registered under the Societies Registration Act, 1860, filed the instant writ petition under Article 102 of the Constitution of the People's Republic of Bangladesh as being *ultra vires* Sections 342, 343 and 327(2) of the Ain, 2023 read with Article 40 of the Constitution along with Article 19(2) of the Bangladesh Legal Practitioner's and Bar Council Order, 1972 (President's Order No. 46 of 1972).

At the same time the petitioners have also challenged the impugned advertisement dated 14.12.2023 issued by the respondent No.4 under Memo No.টিআরপি/নিয়োগ-বাছাই/২০২৩-২৪/২১২৯ (Annexure-C) inviting the aspirant candidates to appear for enlistment as "আয়কর রিটার্ন প্রস্তুতকারী", Tax Return Preparer (TRP) under the Rules, 2023 for those assessees who are to submit income tax return for the first time; whereupon instant Rule Nisi had been issued by this Court along with an order of stay of the operation of the said advertisement dated 14.12.2023 (Annexure-C) for a prescribed period.

Being aggrieved the NBR moved before the Hon'ble Appellate Division by filing Civil Petition for Leave to Appeal No.408 of 2024. Upon hearing the respective contending parties the Appellate Division without intervening the interim order of stay passed by the High Court Division sent the matter before this Bench with direction to hear and dispose of the Rule on merit.

Since the *locus standi* of the petitioners Associations has been assailed by the respondent No.1, the NBR on the ground that they are not *"aggrieved persons"* within the meaning of Article 102 of the Constitution basing its foundation on the decision of the case of ***Bangladesh Sangbad Patra Parishad, represented by its Secretary General Vs. Government of the People's Republic of Bangladesh,*** reported in ***43 DLR (AD) 126*** hence, they are required to cross the threshold of maintainability in order to seek relief invoking the constitutional/special original jurisdiction of this Court under Article 102 of the Constitution.

In support of their standing on the issue of *locus standi* the assertion of the petitioners are that the petitioner No.1 is an association established on 21.07.1999 and the petitioner No.2 was established on 20.12.1951 respectively. Both the petitioners are registered associations under the Societies Registration Act, 1860 and are the association of people involved with practicing law in the area of revenue matters. The petitioners are playing pivotal role in the administration of revenue justice system of Bangladesh. The members of the Associations are playing very important role in collection of revenue of the government by preparing and submitting tax return, conducting cases before the tax authorities and Tribunals for resolving disputes relating to taxes.

Moreover, the members of the petitioners Associations are professionals for practicing tax law before the revenue authorities of Bangladesh. They have been giving respective services to the assessees in preparation of their tax returns, submitting those returns to the tax

authorities and participating in other proceedings relating to tax litigations, arbitrations etc.

Earlier, vide Section 174 of the Income Tax Ordinance, 1984 (in short, the Ordinance) the members of the petitioners were empowered for practicing income tax law. At present, Section 327(2) of the "আয়কর আইন, ২০২৩" has provided similar provisions for practicing tax law as well as for preparing and submitting tax return of the assessees by the members of the Associations. In other words, the petitioners Associations are espousing the grievance of their respective members mainly on the context that introduction of a different class under the name and style "আয়কর রিটার্ন প্রস্তুতকারী" come in direct conflict with Section 327 of the Ain, 2023 which authorises Tax Lawyers "কর আইনজীবী" as defined in Section 327(3) of the Ain, 2023 to prepare and submit tax return on behalf of the respective assessees and that introduction of the said class is not envisaged in Sections 342 and 343 of the Ain, 2023, the Rule making power of the National Board of Revenue.

In support of the said contentions Mr. Shah Monjurul Hoque, the learned Senior Advocate appearing with Mr. Palash Chandra Roy, the learned Advocate for the petitioners at the very outset submits that he will not press Section 342 of the Ain, 2023 and Article 19(2) of the Bangladesh Legal Practitioner's and Bar Council Order, 1972 (P.O. No.46 of 1972) in order to struck down the impugned Rules, 2023. However, so far the other respective impugned provisions of the Rules, 2023 are concerned, he submits that within the four corners of the "আয়কর আইন, ২০২৩" the Legislature has not made any provision to appoint "আয়কর রিটার্ন প্রস্তুতকারী"; rather, Section 327 of the said Ain, 2023 has laid down

provisions for appearing of an assessee before the income tax authority through a Tax Lawyer (কর আইনজীবী). Thus, it is clear that without being a Tax Lawyer, none can appear before the tax authority for representing an assessee. Accordingly, he submits that since the Legislature has made clear provision of law regarding Authorized Representative of the assessee, the NBR has no legal authority to issue notification allowing other persons to act as "আয়কর রিটার্ন প্রস্তুতকারী" .

In this regard, he also goes to submit that in Section 327 of the Ain, 2023 qualifications of a Tax Lawyer has also been prescribed but in the impugned S.R.O. No.207, the NBR has allowed general graduates/equivalents for appearing Tax Aptitude and Accounting Test (TAAT) examination. Hence, it is apparent that the said Authority has completely failed to realize the intention of the Legislature which has been provided for choosing persons who have specialized knowledge for practicing Income Tax Law.

Further, he goes to argue that Section 327 of the Ain, 2023 has allowed the Tax Lawyers to appear before any Tax/Revenue authority on behalf of an assessee; but unfortunately, the impugned S.R.O No. 207 has created provision for the Tax Lawyers for obtaining another certificate from the NBR for the purpose of preparing tax return and thereby the person who is capable of practicing Tax Law before superior authorities cannot now be allowed to prepare tax return, which is absolutely unreasonable and *malafide.*

He again submits that the impugned S.R.O. No.207 has created provision for distributing incentives amongst the "আয়কর রিটার্ন প্রস্তুতকারী". However, the parent law, i.e. "আয়কর আইন, ২০২৩" has not given any

authority to the NBR to allow any person in getting incentive in connection with preparation/submission of income tax return.

He also submits that since the individuals without having any background of Income Tax Law/Accounting will not be able to prepare tax return in accordance with law hence, will go to create serious anomaly in collection of revenue of the government. Moreover, it will create serious backlog in disposal of litigations relating to tax and thus, goes to violate Article 40 read with Article 39 of the Constitution.

In this connection, he goes to argue that admittedly, the impugned Rules, 2023 is a delegated legislature being framed by the NBR invoking power under Section 343 of the Ain, 2023. However, relying upon the decision of the case of ***Kerala State Electivity Board and others vs. Thomas Joseph and others: AIR 2023 (SC) 126*** he submits that a delegated power to legislate by making Rules for carrying out the purpose of the Act is a general delegation without laying down any guidelines; it cannot be exercised so as to bring into existence the substantive rights or obligations or disabilities not contemplated by the provisions of the Ain, 2023 itself. This Court, he submits, while examining the validity of the said Rules, 2023 will have to take into consideration the nature, object and scheme of the enabling Act and also, the respective area over which said power has been delegated under the said Ain and then to decide whether the subordinate legislation conforms to the parent statute.

In this connection, giving reference to Income Tax Act, 1961 of India he submits that Section 295 of the said Act also, has provided general power to the Board to make Rules for carrying out the purpose of the Act, 1961. However, for the purpose of enabling any class of persons in

preparing and furnishing returns of income inserted Section 139(B) in the Act, 1961 by amendment vide Act No.21 of 2006 in order to introduce the concept of Tax Return Preparer. Subsequently, the Central Board of District Taxes framed Tax Return Preparer Scheme, 2006 for enabling the purpose of Section 139(B) of the Act, 1961. In other words, he submits, the impugned Rules, 2023 cannot be made to supplant the provisions of the Ain, 2023 but to supplement the said Ain.

He also submits that the petitioners are registered Associations to deal with professionals who are practicing before the revenue authorities. All communications of the members of the petitioners with the revenue Authorities are maintained through the petitioners and that the revenue authorities also maintain all sorts of communications with the Income Tax practitioners through the petitioners. The members of the petitioners Associations use wokalatnama issued by the petitioners for the purpose of representing their clients before the revenue Authorities. As such, the interest of the petitioners and their members cannot be separated in connection with challenging any illegality being committed by any public authority. Moreover, the petitioners earlier made representations before the respondent No.1 and subsequently, respective resolutions were adopted for filling the instant writ petition.

Considering the given context, he submits that the petitioners Associations representing its members who are practicing Tax Law and thereby assisting in collection of revenue of the government by preparing and submitting tax returns, conducting cases before the tax authorities and Tribunal for resolving disputes relating to taxes, have *locus standi* to

maintain the instant writ petition for striking down the impugned Rules, 2023.

Conversely, Mr. Samarendra Nath Biswas, the learned Deputy Attorney General appearing on behalf of the NBR, respondent No.1 by filing affidavit-in-opposition and supplementary affidavit to the affidavit in opposition submits that revenues are crucial to the economic development of the country. The government collects tax and use it to finance social-economic projects. Without collection of revenue the contributions to the health and education sector and the projects relating to the economic development and to the upliftment of the lifestyle of the underprivileged section of the society would not be possible. In that view of the matter, he submits, the National Board of Revenue being the highest body of tax policy making authorities takes various initiatives to bring more and more tax payers within the tax net in order to maximize the tax-revenue of the government. Keeping that view in mind the NBR has framed Rules, 2023 vide S.R.O No. 207 'আইন/আয়কর- ০২/২০২৩' dated 26.06.2023 in connection with Tax Return Preparer (TRP) or "আয়কর রিটার্ন প্রস্তুতকারী" in order to bring those potential tax payers who still remain outside the tax-net or do not file income tax return. Other initiatives that has been taken by the NBR to enhance the number of tax payers and return are collection of informations from BRTA, National Savings Department and DPDC and also, has introduced the obligation to present proof of submission of return for getting the respective services as mentioned in Section 264 of the Ain, 2023.

In this regard, he goes to contend that S.R.O.No.207 dated 26.06.2023, containing the Rules regarding Tax Return Preparer (TRP), has been

issued by the NBR exercising power as conferred under Section 343 of the Ain, 2023 which described that "বোর্ড, সরকারি গেজেট প্রজ্ঞাপন দ্বারা, এই আইনের উদ্দেশ্য পূরণকল্পে, বিধি প্রণয়ন করিতে পারিবে". The purpose of the Ain, 2023, however, is to collect lawful tax even from those who remain outside the tax-net. The Tax Return Preparers are meant to approach those persons who have TIN certificate and also, have taxable income and to motivate as well as to assist them to prepare their online tax return.

Moreover, he submits, as per the preamble of the Ain, 2023 one of the purposes of the Act is to expand the area of imposition of tax. Therefore, in view of Section 343 of the Ain, 2023 and considering the purposes as mentioned in the preamble of the said Ain, the Rules so have been framed vide the impugned S.R.O. No.207 dated 26.06.2023 cannot be said to have been issued without lawful authority or having necessary backup support of law.

He also goes to argue that the functions of a Tax Return Preparer (TRP) under the said Rules and an Authorized Representative (AR) under Section 327 are not at all at par. A TRP is meant for limited purpose only to bring new tax return filers. The roles of an Authorized Representative (AR) are far wider than the roles of a TRP.

Accordingly, he submits that the status and functions of a Tax Return Preparer (TRP) can never be equated to the status and functions of an Authorized Representative (AR). Rather, bringing a new tax payer within the tax-net by a TRP may in the long run increase the chance of more professional engagement of an Authorized Representative. In other words, he argues, because of probable benefit in the future it cannot be

said that there could be any cause of grievance on the part of an Authorized Representative (AR).

He further goes to contend that the functions of the members of the petitioners Associations are completely different from the Tax Return Preparer (TRP) and thus, by appointing the TRP no conflict will arise with the functions of the members of the petitioners Associations. Moreover, the Ain, 2023 has specifically described the functions of the Authorized Representative; thus, the contention of the petitioners to that effect being a misconceived one hence, not tenable in the eye of law.

Referring to Article 15(b) of the Constitution he again submits that it is the fundamental responsibility of the State to secure its citizens' right to guaranteed employment. Keeping that view in mind as well, the NBR has introduced this new class without affecting the rights and interests of the respective classes as enumerated in Section 327 of the Ain, 2023. In this connection by filing a supplementary affidavit he submits that in response to the impugned advertisement dated 14.12.2023 issued by the respondent No.4 (Annexure-C) inviting the aspirant candidates to appear for enlistment as TRP as many as 10,247 applicants have filed applications, but because of the interim order of stay, process of appointment remains suspended till date. Thus, he goes to contend that if the impugned Rules, 2023 is acted upon, it will go to create a wide scope of employment apart from expansion of tax net towards collection of lawful tax.

He also goes to argue that strategies and methods of bringing a large number of tax payer in order to maximize the lawful collection of tax could be regarded as an issue of public policy. In this regard, he

submits that Bangladesh is now on the verge of elevation to a developing country. For this reason, the government is trying to increase Tax-GDP ratio by bringing, *inter alia*, more and more tax payers within the tax-net. Accordingly, he submits that since the Rules, 2023 has been framed vide the impugned S.R.O. 207 dated 26.06.2023, basing on the policy decision as such, it cannot be challenged under Article 102 of the Constitution.

He further submits that the Rules, 2023 has been framed by the NBR under Section 343 of Ain, 2023. Since Section 343 is not under challenged; hence, the Rule so has been issued challenging the *vires* of Rules, 2023 is not maintainable and as such, it is liable to be discharged.

In this regard, he also submits that in the instant writ petition the petitioners have challenged the legality of the S.R.O. No.207 dated 26.06.2023 along with the advertisement published for appointment of Tax Return Preparer (TRP). However, as per Article 152 of the Constitution the Rules, 2023 is a law. In this connection, he submits that within the four corners of the writ petition there is no assertion as to how and to what extend said S.R.O. has violated the fundamental rights of the petitioners as guaranteed under Part III of our Constitution.

Lastly, he submits that the petitioner Nos.1 and 2 are Bangladesh Tax Lawyer Association (BTLA) and Dhaka Taxes Bar Association. In this regard referring to the *ratio* as has been decided by the apex court in the case of ***Bangladesh Sangbad Patra Parished (supra)*** he submits that an Association is not an aggrieved person and as such, the present petitioners being not aggrieved persons have no *locus standi* to file the instant writ petition.

While giving answer to the core question, whether the expression "*any person aggrieved*" occurring in Article 102(1) and (2)(a) of the Constitution of the People's Republic of Bangladesh should be liberated from the traditional view so far attributed to it our apex court has observed, *inter alia*, in the case of ***Kazi Mukhlesur Rahman Vs. Bangladesh: 26 DLR(SC) 44***

> *"It appears to us that the question of locus standi does not involve the Court's jurisdiction to hear a person but of the competency of the person to claim a hearing, so that the question is one of discretion which the Court exercises upon due consideration of the facts and circumstance of each case.*
> *The appellant in that case was found to be a person aggrieved not because he brought any personal grievance before the Court but because, he raised the issue involving an international treaty affecting the territory of Bangladesh and as to an impending threat to his certain fundamental rights guaranteed by the Constitution."*

In the said case the Appellate Division ultimately settled the following general principles:

> *(1) the High Court Division does not suffer from any lack of jurisdiction under Article 102 to hear a person;*
> *(2) The High Court Division will grant locus standi to a person who agitates a question affecting a constitutional issue of grave importance, posing a threat to his fundamental rights which pervade and extend to the entire territory of Bangladesh;*
> *(3) If a fundamental right is involved, the impugned matter need not affect a purely personal right of the applicant touching him alone. It is enough if he shares that right in common with others;*
> *(4) In interpreting the words "any person aggrieved", consideration of "Fundamental Rights" in Part III of the Constitution is a relevant one;*

(5) It is the competency of the person to claim a hearing which is at the heart of the interpretation of the words "any person aggrieved";

[Emphasis given]

(6) It is a question of exercise of discretion by the High Court Division as to whether it will treat that person aggrieved or not; and

(7) The High Court Division will exercise that jurisdiction upon due consideration of the facts and circumstances of each case."

In ***Bangladesh Sangbad Patra Parished Case (supra)*** standing was denied by the Appellate Division to the said Parished to maintain the writ petition in a representative capacity on behalf of its members, for, the newspaper owners were directly affected by the Wage Board Award but even then none of them moved personally. In this regard, the observations so made by the Appellate Division in the case of ***Dr. Mohiuddin Farooque Vs. Bangladesh*** reported in ***49 DLR (AD) 1 para 7, 8, 9 and 39*** in connection with ***Bangladesh Sangbad Patra Parishad Case*** are apt to be quoted towards resolving the issues in question, which are quoted as under:

"7. The Parishad was not espousing the cause of a downtrodden and deprived section of the community unable to spend money to establish its fundamental right and enforce its constitutional remedy. The indication was thus broadly given that in case of a violation of any fundamental right of the citizens affecting particularly the weak, downtrodden or deprived section of the community or that if there is a public cause involving public wrong or public injury, any member of the public or an organisation, whether being a sufferer himself/itself or not may become a person aggrieved if it is for the realisation of any of the objectives and purposes of the Constitution. .....

8. It is not possible to lay down any strait-jacket formula for determining sufficient interest which may be applicable in all cases.

Of necessity the question has to be decided in the facts of each case. .....

9. ..... the newspaper owners who were directly affected by the Wage Board Award but even then none of them moved personally, but the consideration would have been different if any organisation representing a weaker section of the society had come to complain about a breach of any fundamental right of its members or any public wrong done to the members generally in breach of any provision of the Constitution or law. The Court will have to decide in each case, particularly when objection is taken, not only the extent of sufficiency of interest but also the fitness of the person for invoking the discretionary jurisdiction under Article 102 of the Constitution. .....

39. ..... an association of newspaper owners and news organisations, espousing not the causes of the downtrodden and the poor who have no access to justice, but the cause of its members who are opulent enough to seek redress on their own, cannot in a representative capacity be a person aggrieved, when the association's own interests are not in issue. That case was not an authority even for the proposition that an association can never be a person aggrieved if it espouses the causes of its members in a representative capacity. The Sangbadpatra Parishad Case was decided on the facts of that case and that is how it should be read. .....”

In agreement with the findings of our Appellate Division, this Court while exercising its discretionary jurisdiction under Article 102 of the Constitution shall look into the fitness of the person or Association claiming hearing on the issue of violation of any fundamental right(s) of the citizens affecting particularly the weak, downtrodden or deprived section of the community or that there is a public cause involving public wrong or public injury.

In the instant case, the petitioners Associations are, in fact, agitating the grievance of their respective members, the Tax Lawyers, who claim to have been aggrieved for introduction of a class of persons namely "Tax Return Preparers" (TRP) by framing Rules, 2023 by the NBR in exercise of power as provided under Section 343 of the Ain, 2023.

In this regard, they have challenged the Rules, 2023 on the plea that the Legislature has delegated general rule making power to the NBR under Section 343 of the Act, which does not include existence or creation of the substantive right or obligation of a separate class of persons in the name of TRP, not contemplated by the provisions of the Ain, 2023 itself.

Their further assertion is that the impugned Rules, 2023 being framed vide SRO No. 207 dated 26.06.2023 has affected their statutory rights of continuing their profession without any further approval of other authorities, which has been secured under Section 327(2) and is guaranteed as their fundamental rights under Articles 31 and 40 of the Constitution.

With the object of "যেহেতু আয়কর, অগ্রিম আয়কর, উৎসে কর, ন্যূনতম কর, সারচার্জ ও অন্য কোনো প্রকারের কর আরোপের ক্ষেত্র বিস্তৃতকরণ, আর্থিক শৃঙ্খলা প্রতিষ্ঠা এবং আনুষঙ্গিক অন্যান্য বিষয়ে যুগোপযোগী ও সময়োপযোগী নূতন আইন প্রণয়ন করা আবশ্যক" the Legislature upon repealing the Income Tax Ordinance, 1984 promulgated "আয়কর আইন, ২০২৩" (Act No. 12 of 2023) giving effect from 22.06.2023. However, Section 327 of the said Ain provides/authorizes the Authorized Representative "অনুমোদিত প্রতিনিধি" to appear on behalf of the respective assessee before the authority concerned in connection with tax, which runs as under:

*"**৩২৭। হাজিরার জন্য অনুমোদিত প্রতিনিধি**- (১) কোনো করদাতা, যিনি এই আইনের অধীন কোনো কার্যধারার সহিত সংশ্লিষ্ট কোনো আয়কর কর্তৃপক্ষ বা আপিল ট্রাইব্যুনালে উপস্থিত*

হইবার উপযুক্ত বা প্রয়োজন সেইক্ষেত্রে, ধারা ২২১ এর অধীন ব্যক্তিগতভাবে উপস্থিত হওয়া ব্যতীত, অনুমোদিত প্রতিনিধির মাধ্যমে হাজির হইতে পারিবেন।''

On a close reading of the said provision it transpires that an Authorized Representative "অনুমোদিত প্রতিনিধি" is authorized to represent an assessee before any tax authority or Tribunal concerned, as the case may be, in connection with any proceedings under the Ain, 2023, except the context as provided under Section 221.

However, while defining "অনুমোদিত প্রতিনিধি" the Legislature has included "কর আইনজীবী" "Tax Lawyer".

Section 327(2) is accordingly quoted below:

"৩২৭ (২) এই ধারার উদ্দেশ্যপূরণকল্পে, "অনুমোদিত প্রতিনিধি" অর্থ এইরূপ কোনো ব্যক্তি যিনি করদাতার পক্ষে উপস্থিত হইবার জন্য লিখিতভাবে অনুমোদিত এবং যিনি-

(ক) করদাতার পিতা, মাতা, স্বামী বা স্ত্রী, পুত্র, কন্যা, ভাই বা বোন;

(খ) করদাতার কোনো পূর্ণকালীন নিয়মিত কর্মচারী;

(গ) একজন কর আইনজীবী।"

Section 327(3) defines "কর আইনজীবী", which runs as under:

"৩২৭ (৩) উপ-ধারা (২) এর দফা (গ) এর উদ্দেশ্যে পূরণকল্পে, "কর আইনজীবী" অর্থ-

(ক) বাংলাদেশ বার কাউন্সিলে আইনজীবী হিসাবে নিবন্ধিত কোনো ব্যক্তি;

(খ) অনুশীলনকারী চার্টার্ড অ্যাকাউন্টেট;

(গ) অনুশীলনকারী কস্ট এন্ড ম্যানেজমেন্ট অ্যাকাউন্টেট;

(ঘ) অনুশীলনকারী চাটার্ড সেক্রেটারিজ অব বাংলাদেশ;

(ঙ) উপকর কমিশনারের নিম্নে নহে এইরূপ পদে কমপক্ষে ৫ (পাঁচ) বৎসরের জন্য আয়কর কর্তৃপক্ষ হিসাবে কাজ করিয়াছেন ; অথবা

(চ) বোর্ড কর্তৃক কর আইনজীবী হিসাবে সনদ প্রাপ্ত কোনো ব্যক্তি। "

Section 327(4) requires the tax lawyer to become a member of the Tax Lawyers Association which is registered with the NBR. Vide Section 327(5) a Tax Lawyers Association shall not be treated/considered as a Tax Lawyers' Association unless it is registered with the NBR.

"৩২৭(৪) প্রত্যেক কর আইনজীবীকে বোর্ডের সহিত নিবন্ধিত কোনো কর আইনজীবী সমিতির সদস্য হইতে হইবে।

(৫) বোর্ড কর আইনজীবী সমিতির নিবন্ধন প্রদান করিবে এবং বোর্ডের সহিত নিবন্ধিত নহে এইরূপ কোনো আইনজীবী সমিতি কর আইনজীবী সমিতি হিসাবে গণ্য হইবে না।"

From the above, it appears that *(a) an assessee in his discretion may engage an Authorized Representative (AR) to represent him who may or may not be a new tax payer;*

(b) An AR is entitled to represent an assessee in connection with the proceedings under the Ain, 2023 before the concerned tax Authority or the Tribunal, as the case may be;

(c) An AR is entitled to prepare and furnish revised return in addition to original return;

(d) An AR is entitled to charge his professional fees from the respective tax payer for rendering his respective service(s);

(e) An AR is entitled to file return of the respective assessee both manually as well as by using online platform.

Keeping in view of the purpose/object of the Ain, 2023 to collect lawful tax even from those who remain outside the domain of tax net as well as to expand the area of imposition of tax for the revenue interest of the country and also, through the assistance of TRP to approach the persons concerned who have TIN certificate and have taxable income and to motivate as well as to assist them to prepare and furnish return of income through online platform the NBR in exercise of power as provided under Section 343 framed Rules, 2023 and thereby has introduced a class of persons under the name and style *"Tax Return Preparer"*. Said TRP having required qualifications as provided under Rule 3 is certified by the NBR subject to passing the Tax Aptitude and Accounting Test (TAAT)

(Rule 4); they are enlisted with "সহায়তাকারী প্রতিষ্ঠান" with Unique Identification Number (Rule 5). Their only function, however, is to prepare and furnish income tax return. In no manner whatsoever they shall be considered as a tax lawyer under Section 327 of the Ain, 2023 (Rules 6 and 11 respectively). However, for rendering their respective services they are entitled to receive "প্রনোদনা " "incentive" on the tax so has been paid by the assessee under Sections 173 and 178 on his declared income in the ratio as provided under Rule 12. In other words, no separate charge is payable by the assessee for preparing and furnishing tax return. However, his certificate is liable to be cancelled for violation of the contexts as prescribed under Rule 17.

Thus, it is apparent that *(a) vide Rules, 2023 the Board has introduced a new class of persons upon including Tax Lawyers [Rule 4(2)] being enlisted and certified by NBR with Unique Identification Number (Rule 5) whose sole duties and responsibilities is to prepare and furnish tax return on behalf of the respective new as well as old assessee only through online platform;*

(b) For rendering their respective services to the assessee they cannot charge fees from the respective tax payer but will receive "প্রনোদনা " at the respective ratio on the tax to be deposited basing on the income of the said tax payer. However, engaging a TRP is the absolute discretion of the respective assessee.

(c) A TRP cannot be engaged as an Authorized Representative of an assessee to appear on his behalf in connection with the proceedings under the Ain, 2023 before the concerned tax Authority or the Tribunal concerned;

(d) A TRP is not authorized to prepare and furnish revise return on behalf of the assessee;

(e) A TRP shall not be considered as a "কর আইনজীবী" under Section 327; and

(f) With the introduction of this new class without affecting the rights and interests of the "Authorized Representative" as defined in Section 327 of the Ain, 2023 scope of employment has been created in addition to expansion of tax net for lawful collection of tax from the respective tax payers.

In view of the above, it can clearly be discerned that there is a clear line of demarcation between the status and functions of an Authorized Representative (AR) and a Tax Return Preparer (TRP) and that considering the context of the Ain, 2023 and the Rules, 2023 the creation of this new class cannot be said to have offended the fundamental rights of the "কর আইনজীবী" as guaranteed under Article 40 read with Article 31 of the Constitution.

Moreso, the Rules, 2023 having been framed by the NBR under Section 343 of the Ain, 2023 it is a law in view of Article 152 of the Constitution. However, the petitioners have miserably failed to show how and to what extend the impugned Rules, 2023 are inconsistent with the Constitution and or the parent Act, 2023.

Considering the above, we have no manner of doubt to find that neither the petitioners Associations nor its respective members are aggrieved persons within the meaning of Article 102 of the Constitution.

Last but not the least, the petitioners Associations have filed the instant writ petition in a representative capacity espousing the personal

cause of their respective members, not a public cause involving public wrong or public injury.

In view of the above and considering the facts and circumstances of the instant case it is found by this Court that the petitioners Associations have no *locus standi* to maintain the instant writ petition. Accordingly, we find it redundant to make observations on the other issues being raised by the petitioners Associations.

In the result, this Rule is discharged without any order as to costs.

The order of stay granted earlier by this Court is hereby vacated.

Communicate the judgment and order to the respondents concerned at once.

Muhammad Mahbub Ul Islam, J:

I agree.

Montu (B.O)