**Decision Number:** 8643

**Decision Date:** 2068/04/26 B.S. (11/08/2011 A.D.)

**Final Decision:** Supreme Court of Nepal, Special Bench

**Pre-Decisions:** N/A (Writ Petition filed directly at the Supreme Court)

**Petitioner:** Anjani Kumar Thapa (on behalf of Nepal National Pensioners Association, Central Office)

**Respondent:** Office of the Prime Minister and Council of Ministers, et al.

**Key Words:** Taxation, Pension, Social Security, Legislative Power, Judicial Review, Policy Matter, Income Tax Act, 2058 B.S.

**Key Points:**

1. The state must be generous regarding the rights and welfare of its citizens, especially retired civil servants who have dedicated their lives to the nation's service.
2. Pension is a social security measure provided to ensure the well-being of retired public servants in their later years. Diminishing this benefit undermines the very concept of social security.
3. Imposing taxes on the already minimal pension amounts can make the daily life of retired employees difficult and jeopardize their social security.
4. The state must carefully consider the social security aspect of pensions before defining it as taxable income, as expanding the tax base should not come at the cost of citizens' rights or weaken social security provisions.
5. The imposition and collection of taxes are inherently legislative matters. Courts should not interfere with policy decisions made by the legislature through judicial review, especially when the law is enacted in accordance with constitutional provisions.

**Facts of the Case**

* The petitioner, a representative of the Nepal National Pensioners Association, challenged the government's decision to impose a 1% tax on pension income.
* The Government of Nepal, through the Economic Act, 2066, amended the Income Tax Act, 2058.
* The amendment introduced a 1% tax on the first slab of taxable income for a natural person, which was set at up to Rs. 1,60,000 for an individual and Rs. 2,00,000 for a couple.
* The petitioner argued that pension is a social security benefit for retired employees who dedicated their entire lives to state service and should not be considered "taxable income" in the same way as regular employment income.
* The association filed a writ petition at the Supreme Court seeking an order of Certiorari and Mandamus to quash the decision to levy the 1% tax on pensions and to direct the government to stop collecting it and refund any amount already deducted.

**Petitioner’s Arguments (Nepal National Pensioners Association)**

* Pension is a social security benefit provided by the state for the livelihood of retired employees in their old age; it is not an "income" from employment.
* The state giving a benefit with one hand and taking it back with the other (through tax) is illegal, unscientific, and contrary to the principles of social security.
* Imposing tax on pensions violates the fundamental rights guaranteed by the Interim Constitution of Nepal, 2063, including the right to property, employment, and information.
* The 1% tax should be quashed, and the government should be ordered to refund the amounts already deducted from the pensions of retired employees.

**Respondent’s Arguments (Ministry of Finance, et al.)**

* The 1% tax was imposed through a legal amendment to the Income Tax Act, 2058, by the Economic Act, 2066, which was passed by the Constituent Assembly acting as the legislature.
* The tax applies equally to both active and retired employees' taxable income up to the specified slab, so it is not discriminatory.
* The Constitution of Nepal allows for the imposition of taxes through law. The power to levy, collect, and define the scope of taxes is a legislative prerogative.
* The court should not interfere in policy matters that fall within the legislature's jurisdiction. Therefore, the writ petition should be dismissed.

**Legal Issues**

1. Is the provision in the Economic Act, 2066 (amending the Income Tax Act, 2058) that imposes a 1% tax on pension income unconstitutional and contrary to the principles of social security?
2. Does the imposition of tax on pension income fall within the legislative authority of the state, or is it a matter subject to judicial intervention?
3. Can pension income be treated as "taxable income" from "employment" under the Income Tax Act, 2058?

**Judgment**

* The Supreme Court acknowledged the petitioner's argument that pension is a social security benefit and that taxing it could cause hardship to retired employees. It urged the state to be mindful of the social security aspect when defining taxable income.
* However, the Court found that the core issue was a matter of legislative policy. The Interim Constitution of Nepal, 2063, in Article 89, explicitly states that no tax shall be levied or collected except in accordance with the law. This provision vests the power of taxation in the legislature.
* The 1% tax was imposed through a duly enacted law (Economic Act, 2066) passed by the then-legislature. Defining what constitutes "taxable income" is a policy question that falls within the legislature's domain.
* The Court held that it is inappropriate for the judiciary to interfere with such policy matters through judicial review, as this would encroach upon the legislative function. The principle of "No taxation without representation" is upheld when taxes are imposed by a representative legislative body.
* The Court also noted that the tax rate was applied uniformly to both active and retired employees within the same income slab, and therefore, it could not be considered discriminatory or a violation of the right to equality.
* While expressing sympathy for the petitioners' situation and emphasizing the state's responsibility towards its retired employees, the Court concluded that it could not issue the requested order. It determined that challenging the wisdom of a tax law is a political and legislative matter, not a legal one, as long as the law is constitutionally enacted.
* Therefore, finding no grounds to declare the legal provision unconstitutional or to interfere with a legislative policy decision, the writ petition was dismissed.

**Significance**

* This decision firmly establishes the principle that taxation is a legislative policy matter, and courts will generally not interfere with the legislature's discretion to define taxable income and set tax rates, provided the process is constitutional.
* It reinforces the separation of powers, delineating the boundaries between judicial review and legislative authority in the context of economic policy.
* While the writ was dismissed, the judgment contains significant obiter dicta (judicial observations) emphasizing the state's moral and social obligation to protect the welfare of its retired employees, urging policymakers to consider the social security dimension of pensions when formulating tax laws.

**Source**

1. Interim Constitution of Nepal, 2063
2. Income Tax Act, 2058 B.S.
3. Economic Act, 2066 B.S.
4. NKP, 2068, Nepal National Pensioners Association v. Office of the Prime Minister and Council of Ministers (Decision No. 8643, Decided on 2068/04/26 B.S.)