

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**WRIT PETITION NO. 2660 OF 2007**

Narayan S/o Sahebrao Gaikwad .. Petitioner

**Versus**

The State of Maharashtra and others .. Respondents

Shri S. A. Gaikwad, Advocate for the Petitioner.

Smt. M. A. Deshpande, A.G.P. for Respondent Nos. 1, 3 and 4.

**CORAM : S. V. GANGAPURWALA AND**

**A. I. S. CHEEMA, JJ.**

**DATE : 26TH MARCH, 2015.**

**PER COURT :**

. Mr. Gaikwad, the learned counsel for the petitioner states that, the petitioner had sown sugar cane crop in his 1H 60R land in gut No. 21 situated at village Jogaladevi. The said land is situated at the bank of Godavari river. The learned counsel states that, all of a sudden, the respondent No. 2 opened the gates of Jaikwadi Dam because of which large number of water was discharged. The sugar cane crop of the petitioner in the said heavy flood of water was damaged. The petitioner was give ex-gratia payment of Rs. 16,000/-. The same was ex-gratia payment and not the compensation for the loss sustained by the petitioner. The learned counsel submits that, on 07.03.2007 the petitioner had requested the Collector, Jalna to pay him Rs. 1,51,000/- as

compensation amount. Even the Collector directed the Tahsildar Ghansavangi to take appropriate action. The learned counsel submits that, the respondents ought to have discharged water from the Jayakwadi Dam only after giving notice to agriculturists well in advance. According to the learned counsel sugar cane in normal climatic condition would have given yield of 40/50 M.T. per acre and in 4 acres of land final weight would have been atleast 160 M. T. and would have fetched price of 1,44,000/- at the rate of Rs. 900/- per M. T. The learned counsel submits that, as the petitioner has been paid Rs. 16,000/-, the petitioner is entitled for Rs. 1,16,000/- as damages for decayed sugar cane. The learned counsel submits this damage to the crop has been caused due to negligent act of respondents. The petitioner is entitled for the damages under the Public Law. According to the learned counsel, if the respondents would have taken proper care and would have released the water in stages, then sugar cane crop would not have been damaged. There was no co-ordination between committee and various authorities of Government concerned with Jayakwadi Dam. This Court can take judicial note of the loss occasioned to the sugar cane crop of the petitioner.

2. Mrs. Deshpande, the learned Assistant Government Pleader submits that, detailed affidavit has been filed showing the manner in which precautions have been taken by

respondents while discharge of water from Jayakwadi Dam. Release of water was necessary. The care was taken to see that, there was minimum damage and loss to the agriculturists, so also to the property of citizens. Ex-gratia payment of Rs. 16,000/- was made after making necessary enquiry.

3. We have considered the submissions canvassed by the learned counsel for respective parties. We do appreciate the submissions made by the learned counsel for the petitioner that, the petitioner can claim damages under public law.

4. The Government made ex-gratia payment of Rs. 16,000/-. The weight of sugar cane would depend upon various factors such as climatic condition, excessive rain/drought, etc. One cannot come to an exact figure about the damages. Moreover, there is no material before this Court regarding the quantity of the sugar cane which was transported by the petitioner from his land in the previous year or the subsequent year. In absence of any material on record, it would not be possible for this Court to come to a conclusion about amount of loss sustained by the petitioner. This Court cannot on hypothetical assessment award any damages. The damages would be compensation for the loss sustained. The main aim of granting damages would be to bring the party in the position which he would have been, if no such loss would have been sustained that is *restitutio in integrum*.

5. Considering the aforesaid aspects of the matter, relief claimed by the petitioner cannot be considered in writ jurisdiction in absence of any material on record. In the light of the above, the writ petition is disposed of. No costs.

**[ A. I. S. CHEEMA, J. ]**

**[ S. V. GANGAPURWALA, J. ]**

bsb/March 15