

CHAPTER - VI

NON-TAX RECEIPTS

EXECUTIVE SUMMARY

What we have highlighted in this Chapter

In this Chapter we present few illustrative cases of ₹ 9.04 crore selected from observations noticed during our test-check of records relating to non/short levy, non/short realisation etc. in the district mining offices, where we found that the provisions of the Acts/Rules/Government notifications were not observed.

It is a matter of concern that similar omissions had been pointed out by us repeatedly in the Audit Reports in the past years, but the Department did not take corrective action till we pointed out in audit.

Increase in tax collection

The collection of receipts from Non-ferrous Mining and Metallurgical Industries consistently increased over the budget estimates during the period from 2007-08 to 2011-12 and also the contribution in the total non-tax receipts increased substantially during the period 2010-11 and 2011-12 over the previous years.

Very low recovery by the Department in respect of observations pointed out by us in earlier years

During the period from 2008-09 to 2010-11, we have pointed out non/short levy, non/short realisation, loss of revenue etc., with revenue implication of ₹ 442.10 crore in 635 cases in respect of receipts from Non-ferrous Mining and Metallurgical Industries. Of these, the Department/Government had accepted audit observations in 365 cases involving ₹ 309.61 crore which also include the cases pointed out by us during earlier years and had recovered ₹ 4.99 lakh. Negligible recovery of ₹ 4.99 lakh against the accepted cases involving ₹ 309.61 crore indicates lack of promptness on the part of the Government/Department in realising the Government dues.

Results of audit conducted of the units for the year 2011-12

In the course of audit of records of 25 units relating to receipts from Non-ferrous Mining and Metallurgical Industries, we found non/short realisation, loss of revenue and other irregularities involving ₹ 80.39 crore in 177 cases.

The Department accepted non/short levy, non/short realisation, loss of revenue and other deficiencies of ₹ 131.12 crore in 148 cases, out of which 46 cases involving ₹ 22.16 crore were pointed out during 2011-12 and the rest in earlier years. An amount of ₹ 4.99 lakh was realised in two cases during the period.

Our conclusion

The Department needs to improve the internal control system so that weaknesses in the system are addressed and omissions detected by us are avoided in future.

It also needs to take appropriate steps to recover the amount involved, at least in the accepted cases.

CHAPTER-VI: NON- TAX RECEIPTS

Non-ferrous Mining and Metallurgical Industries

6.1.1 Tax administration

The mining of minerals is governed by the Bihar Minor Mineral Concession Rules (BMMC Rules), 1972 and Mineral Concession Rules (MC Rules), 1960 framed by the State Government under the Mines and Minerals (Regulation and Development) Act (MMRD Act), 1957. The minor minerals available in the State are brick earth, stones, lime stone, sand etc.

The regulation and development of mines and minerals are administered by the Mines and Geology Department with the Commissioner-cum- Principal Secretary as its head at the Government level. The Director of Mines is the head of the Department and is assisted by one Additional Director of Mines and three Deputy Director of Mines (DDMs) at headquarters level. Further, there are nine Deputy Director of Mines at Divisional offices and at the district level, 14 district mining offices are headed by Assistant Director of Mines/Mining Development Officers independently where as Mining Inspectors (MIs) are the in-charge of the remaining 24 district mining offices who are under the control of the Collector of the respective districts and are responsible for assessment, levy and collection of royalty and other mining dues.

6.1.2 Trend of receipts

The variation between budget estimates and actual receipts from Non-ferrous Mining and Metallurgical Industries during the period 2007-08 to 2011-12 along with the total non-tax receipts during the same period is mentioned below:

(₹ in crore)

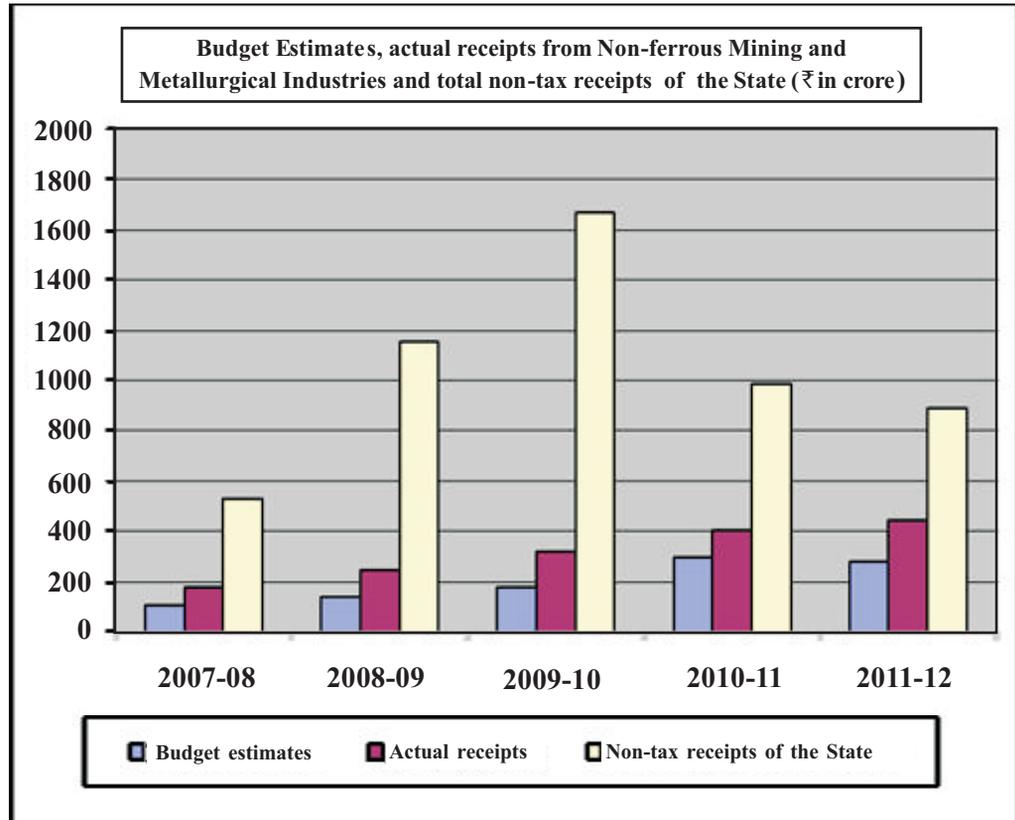
Year	Budget estimates	Actual receipts	Variation excess (+)/ shortfall (-)	Percentage of variation	Total non-tax receipts of the State	Percentage of actual receipts (col.-3) vis-à-vis total non-tax receipts(col-6)
1	2	3	4	5	6	7
2007-08	102.93	178.66	(+)75.73	(+)73.57	525.59	33.99
2008-09	140.00	245.00	(+)105.00	(+)75.00	1153.32	21.24
2009-10	180.00	319.93	(+)139.93	(+)77.74	1670.42	19.15
2010-11	294.00	405.59	(+)111.59	(+)37.96	985.53	41.15
2011-12	280.00	443.10	(+)163.10	(+)58.25	889.86	49.79

(Source: Revenue and Capital Receipt, (Detail) ; Finance Accounts, Government of Bihar)

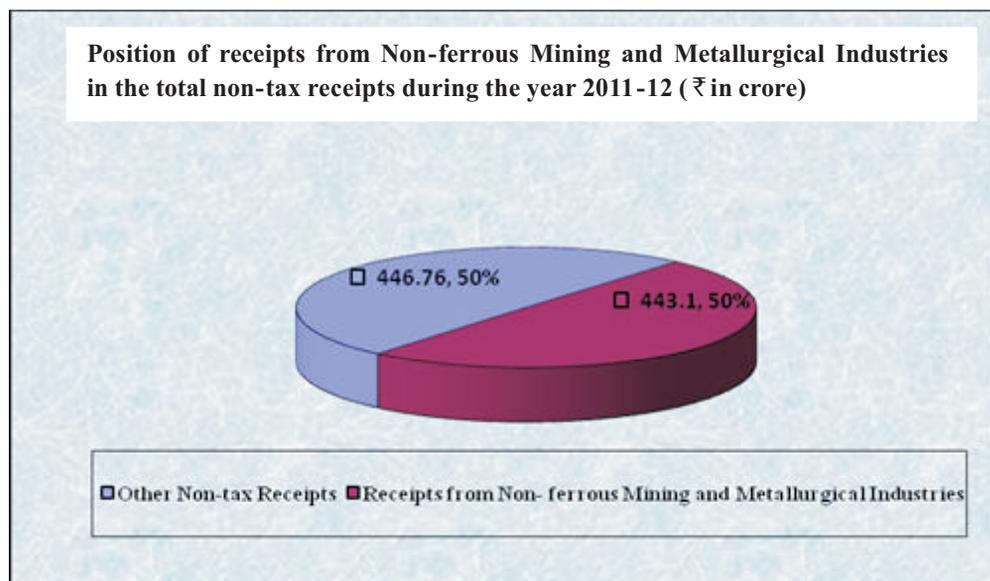
The above table indicates that the collection from Non-ferrous Mining and Metallurgical Industries was consistently more than the budget estimates during the period 2007-08 to 2011-12. The contribution of receipts from

Non-ferrous Mining and Metallurgical Industries in the total non-tax receipts increased substantially during the period 2010-11 and 2011-12 over the previous years.

The trend of actual receipts vis-à-vis the estimated receipts from Non-ferrous Mining and Metallurgical Industries and total non-tax receipts are given in the following bar chart:



The following pie chart depicts the contribution from Non-ferrous Mining and Metallurgical Industries to the total non-tax receipts (₹889.86 crore) of the State during 2011-12:



6.1.3 Impact of audit

Revenue impact

During the period from 2008-09 to 2010-11, we have pointed out, through our inspection reports, non/short levy, non/short realisation, loss of revenue etc., with revenue implication of ₹ 442.10 crore in 635 cases. The Department/Government had accepted audit observations in 365 cases involving ₹ 309.61 crore. However, recovery of only ₹ 4.99 lakh was reported by the Department to have been effected in the accepted cases. The details are shown in the following table:

Year	No. of units audited	Pointed out		Accepted		Recovery (₹ in lakh)
		No. of cases	Amount (₹ in crore)	No. of cases	Amount (₹ in crore)	
2008-09	44	220	93.47	202	89.46	Nil
2009-10	33	175	230.45	145	218.09	3.20
2010-11	48	240	118.18	18	2.06	1.79
Total	125	635	442.10	365	309.61	4.99

We recommend that the Government may take appropriate steps to recover the amounts involved, at least in the accepted cases.

6.1.4 Results of audit

In the course of audit of records of 25 units relating to receipts from Non-ferrous Mining and Metallurgical Industries, we found non/short realisation, loss of revenue and other irregularities involving ₹ 80.39 crore in 177 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
1.	Non/short realisation of royalties	28	17.10
2.	Non-levy of penalty for illegal removal of brick earth	17	5.82
3.	Loss due to non-levy of fine for continued contravention	10	1.78
4.	Non-levy of penalty against works contractors for illegal procurement of minerals	23	38.06
5.	Non-realisation of registration fees	5	2.87
6.	Loss of revenue due to delay in notification for settlement of sand <i>ghats</i>	7	4.17
7.	Non-levy of interest for belated payment of bid money	9	0.82
8.	Non-levy of interest	23	2.42

9.	Loss of revenue due to non-realisation of royalty for excess dispatch of stone	5	1.35
10.	Non-realisation of auctioned amount and interest thereon from the lessee of stone quarry and stockist licence holder	5	0.46
11.	Other cases	45	5.54
Total		177	80.39

During 2011-12, the Department accepted underassessment and other deficiencies *etc.* involving ₹ 131.12 crore in 148 cases, out of which 46 cases involving ₹ 22.16 crore were pointed out during 2011-12 and the rest during the earlier years. The Department also reported recovery of ₹ 4.99 lakh in two cases which were pointed out during the year 2009-10 and 2010-11.

A few illustrative cases involving tax effect of ₹ 9.04 crore are mentioned in the following paragraphs.

6.2 Non-compliance of the provisions of the Acts/ Rules

Our scrutiny of the records of the District Mining Offices revealed several cases of non-compliance of the provisions of the Act/Rules and Departmental Orders as mentioned in the succeeding paragraphs in this Chapter. These cases are illustrative and are based on a test-check conducted in Audit. Despite such omissions and irregularities being pointed out in previous years, they continue to persist. There is need for the Government to improve the internal control system and internal audit.

6.3 Operation of brick kilns

6.3.1 Non/short realisation of royalty

Under the provisions of Rule 26 (A) and 28 of the Bihar Minor Mineral Concession (BMMC) Rules 1972 and Notification issued (March 2001) thereunder, brick kiln owners are required to pay the consolidated amount of royalty in two equal installments at the prescribed rates, based on the Category of the brick kiln areas after obtaining permit by paying an application fee of ₹ 2,000 per kiln. Further, the BMMC Rules and instructions issued in October 1987, provide that if the brick kiln owner fails to make payment of consolidated amount of royalty in the manner so prescribed, the competent officer shall stop such business and initiate certificate proceedings for realisation of outstanding royalty/penalty under Rule 37 of the BMMC Rules. Besides, interest at the rate of 24 per cent per annum may also be charged on the rent, royalty, fee or other sum due to the Government as per Rule 43 (A) of the BMMC Rules.

We observed during test-check of brick kiln register, Mining Inspector's report and other relevant records maintained in the individual files of the brick kiln owners between February and June 2012 in seven¹ District Mining Offices that 435 brick kilns (Category²-I: 29, Category-II: 69 and Category-III: 337) were operated in brick

season³ 2010-11 and 2011-12, out of which 346 brick kilns owners had not paid royalty amounting to ₹ 1.99 crore while the balance 89 owners had made partial payment of royalty of ₹ 28.83 lakh against a total amount of ₹ 52.28 lakh. Further scrutiny of files revealed that though these brick kiln owners who had applied for grant of permits and had paid requisite application fee but they did not submit the supporting documents like 'No objection certificate' from the State Pollution Control Board, *Khatiani* of land along with consent of

¹ Aurangabad, Bhagalpur, Jamui, Muzaffarpur, Patna, Rohtas, and Saharsa.

² Category-I: Brick kilns situated in urban areas of Patna, Muzaffarpur, Gaya and Darbhanga having capacity of 45 lakh bricks;

Category-II: Brick kilns situated in urban areas except Patna, Muzaffarpur, Gaya and Darbhanga having capacity of 35 lakh bricks and

Category-III: Brick kilns situated in rural areas having capacity of 25 lakh bricks.

³ Brick season starts from the month of October every year to March of the subsequent year.

the owner of land or an affidavit to that effect etc. Thus permits were not issued in any cases. Further, action was not initiated by the concerned Mining Officers (MOs) to stop their business. Thus, non-initiation of follow up action by the MOs for stopping of illegal operation of brick kilns resulted in non/short realisation of royalty amounting to ₹ 2.23 crore besides interest. Further, the DMOs were also ignorant towards the environmental effect as the mining activities were being carried out in their jurisdiction without No Objection Certificate from the State Pollution Control Board.

After the cases were pointed out in audit, three⁴ MOs stated (between September and October 2012) that FIR had been lodged against the defaulter brick kiln owners. MO, Bhagalpur stated (September 2012) that a sum of ₹5.75 lakh had been recovered in 14 cases and the business were stopped in the remaining cases while MOs, Aurangabad and Muzaffarpur stated (September 2012) that the revenue recovery certificate cases had been instituted against the defaulter brick kiln owners for brick season 2010-11 and demand notices had been issued for the brick season 2011-12. The development in other cases is awaited (January 2013).

The matter was reported to the Government/Department in July 2012; their reply has not been received (January 2013).

⁴ Jamui, Patna and Saharsa.

6.3.2 Non-levy of penalty for illegal removal of brick earth

Under Rule 4 (1) of the BMMC Rules, no person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying permit or, as the case may be, a mining lease, granted under these Rules.

Rule 40 (8) of the BMMC Rules prescribes that the penalty for any illegal mining includes recovery of the price of the mineral, rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority. Further, Rule 40(1) of the Rules *ibid* prescribes initiation of criminal proceedings attracting punishment of simple imprisonment that may extend to six months or with fine which may extend to rupees five thousand or both.

We observed between February and March 2012 from the Demand and Collection Register and Permit Register of brick kiln owners, in three⁵ District Mining Offices that 355 brick kilns (Category-I: 25, Category-II: 48 and Category-III: 282) were operated in brick season 2010-11 without application for grant of permit along with requisite fee and obtaining quarrying permit for excavation of earth and paying the consolidated amount of

royalty. Thus, the excavation of brick earth without quarrying permit was not only illegal but also affecting the ecological balance. Despite the fact that the mining activities were being carried out, the Department did not take any action to stop the business or levy penalty as per the BMMC Rules. Thus, taking the minimum price of mineral equivalent to royalty, there was non-levy of penalty of ₹ 1.97 crore⁶, besides environmental effect.

After the cases were pointed out in audit, MOs Nawada and Patna stated (September and October 2012) that FIRs had been lodged against the defaulter brick kiln owners. MO Rohtas (Sasaram) stated (April 2012) that provision of Rule 40(8) of the BMMC Rules was not applicable in these cases as Rule 26 (A) of the BMMC Rules starts with the phrase 'notwithstanding anything contained in these rules', means that no other provision of the Act/Rules would affect the provision laid down under Rule 26(A) and that action for stoppage of the said work had been taken as per Rules. The contention of the MO is contrary to the fact that the mining was done without obtaining the requisite quarrying permit and as such these cases were to be treated as illegal excavation and penalty was leviable under Rule 40(8) of the BMMC Rules. Further developments in the matter were awaited (January 2013).

The matter was reported to the Government/Department in July 2012; their reply has not been received (January 2013).

⁵ Nawada, Patna and Rohtas (Sasaram).

⁶ In absence of actual price of earth excavated, the price has been calculated on royalty payable by the brick kiln owners, which is one of the components for working out cost.

6.3.3 Non-levy of fine for continued contravention of the provisions of Acts/Rules

Section 21(2) of Mines and Minerals (Development and Regulation) Act, 1957 provides that whoever contravenes the provision of the Act, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both, and in case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

We observed during test-check between October 2011 and March 2012, from the Certificate Case Register and Demand and Collection Register in the District Mining Offices, Aurangabad and Jehanabad that 12 brick kiln owners continued to operate the kilns without payment of royalty and valid permit between 2006-07 and 2011-12. Although, the MOs had filed Revenue Recovery Certificate cases against the defaulter brick kiln owners

during 2007-08 and 2011-12 for realisation of royalty and interest, they failed to stop the business as well as to impose fine for continued contravention as per aforesaid provisions of the Act. The maximum fine leviable for continued contravention of the provision of the Act worked out to ₹ 46.24 lakh.

After this was pointed out in audit, the Deputy Director of Mines, Magadh Division, Gaya stated (September 2012) that Revenue Recovery Certificate cases had been instituted and the Superintendent of Police was being requested for implementation of *kurki*/arrest warrant against the defaulters.

The matter was reported to the Government/Department in April and June 2012; their reply has not been received (January 2013).

6.4 Non-levy of penalty for illegal use of ordinary earth

Ordinary earth used for filling or leveling purpose in construction of embankments, roads, railways and buildings is a minor mineral. In this regard the Government of Bihar vide Gazette Notification (April 2006) fixed the rate of royalty of ordinary earth as ₹ 15 per cubic metre. Under Rule 27 and 28 of the BMMC Rules, any quarrying activities require sanction of the competent authority on payment of requisite fee.

Rule 40(8) of the BMMC Rules prescribes the penalty for illegal mining which includes recovery of the price of the mineral, rent, royalty or taxes as the case may be. Further, Rule 40(1) of the Rules *ibid* prescribes initiation of criminal proceedings attracting punishment of simple imprisonment that may extend to six months or with fine which may extend to rupees five thousand or both.

We observed between October 2011 and May 2012 in three⁷ District Mining Offices that a sum of ₹ 60.35 lakh was deducted/deposited by National Building Construction Corporation Ltd., Bhagalpur in two cases and by the works contractors of Railway in two cases as royalty during the period from April 2009 to January 2012, for use of mineral in earth work. We further observed that the works contractors who had removed the minor mineral had not applied for the requisite quarrying permit for the same. Thus, the contractors removed the earth illegally for which they were liable to pay minimum penalty equivalent to the

amount of royalty i.e. ₹ 60.35 lakh in terms of the Rules. However, the concerned MOs had neither levied penalty of ₹ 60.35 lakh nor any action for initiation of criminal proceedings was taken in accordance with the provision of the BMMC Rules.

After we pointed out in audit, MO Banka stated (September 2012) that notices of demand had been issued and MO Kishanganj stated (October 2011) that reference had been made to concerned Railway Authorities for withholding the payment of contractor till issuance of Royalty Clearance Certificate. MO Katihar stated (October 2011) that the contractor had paid the royalty and Rule 40(8) of the BMMC Rules was not applicable. The reply is not in consonance with the fact that mining was done without valid permit and as such these cases were to be treated as illegal excavation and penalty was leviable under the Rule 40(8) of the BMMC Rules. Further development is awaited (January 2013).

The matter was reported to the Government/Department in July 2012; their reply has not been received (January 2013).

⁷ Banka, Katihar and Kishanganj.

6.5 Non-realisation of interest on delayed payment from settlee of sand ghats

Rule 11 (A) of BMMC Rules provides that settlement of sand as minor mineral will be done by public auction by the Collector to the highest bidder on annual basis. Rule 11 (D) of BMMC Rules provides that every such settlement shall be valid only for the calendar year in which it is so made irrespective of the date on which such settlee comes in its possession and in no case shall such settlement or possession continue in the succeeding calendar year.

Further, as per clause 11 of notification of December 2006 issued by the Mines and Geology Department, Government of Bihar, the settlees were required to pay 50 per cent of the settlement amount before operation of sand ghats, 25 per cent up to 15th of March and remaining 25 per cent up to 25th September for the calendar year. As per Rule 43 (A) of the BMMC Rules, Government may charge simple interest at the rate of 24 per cent per annum on any rent, royalty, fee or other sum due to the Government.

We observed in May 2012 from the settlement files of sand ghats and Demand and Collection Register for the year 2010-12 District Mining Office, Banka that two settlees of sand ghats paid the settlement amount of ₹ 12.97 crore for calendar year 2011 and 2012 with a delay ranging between eight and 242 days. However, the MO did not initiate any action to realise the interest for delay in payment of Government dues. This resulted in non-realisation of interest of ₹ 77.86 lakh on delayed payment of the settlement amounts.

After we pointed out in audit, MO Banka stated (September 2012) that

the settlee of Unit II had deposited a sum of ₹ 34,038 as interest. Further developments in this regard are awaited (January 2013).

The matter was reported to the Government/Department in July 2012; their reply has not been received (January 2013).

6.6 Short realisation of royalty and interest from lease holders of quarry leases

Under Rule 9 (A) of the BMMC Rules, 1972, the Government may by Notification in the Official Gazette, direct that any mineral may be leased out or settled by Public auction/tender in the manner prescribed in Rule 52 of the Rules *ibid* and the period of quarrying lease shall not be less than five years. Sub rule -4 and 5 provides that the bid amount shall be deposited on a yearly basis in equal installments and each installment shall be deposited before 31st January. If any installment shall not be deposited before prescribed period, 24 *per cent* simple interest per annum shall be charged up to two months and after that action for cancellation shall be taken.

We observed during test-check of 80 leases of stone quarries (between March and May 2012) from the settlement files of stone quarry in four⁸ District Mining Offices that 15 stone quarries were auctioned at ₹ 13.26 crore between August 2003 and November 2008. The leaseholders had to pay the bid amount in installments on a yearly basis which accumulated to ₹ 12.86 crore upto May 2012, against which the leaseholders had paid

a sum of ₹ 9.65 crore only between June 2005 and March 2012. Besides, interest of ₹ 26.30 lakh on short payment/belated payment of installments of royalty was also chargeable as per aforesaid provision. Despite short payment of yearly installment of royalty, action for cancellation of lease had not been initiated by the concerned MOs against 11 leaseholders and in four cases (three cases of Aurangabad and one case of Jamui), though the leases were cancelled between December 2011 and April 2012, action for realising the dues was not taken as per Schedule-I under Section 3(6) of the Public Demand Recovery (PDR) Act 1914. This resulted in short realisation of revenue amounting to ₹ 3.47 crore including interest.

The matter was reported to the Government/Department in July 2012; their reply has not been received (January 2013).

⁸ Aurangabad, Banka, Jamui and Rohtas.

6.7 Short realisation of royalty for dispatch of stone in excess of auctioned amount

Under the provisions of Rule 9 (A) of the BMMC Rules, 1972, the Government may by Notification in Official Gazette direct that any mineral contracts be leased out or settled by public auction/tender in the manner prescribed under Rule 52 of the Rules *ibid*. The period of quarrying lease shall not be less than five years and the leaseholders shall pay the royalty in advance in five equal installments before 31st January of each year. Further, if the extracted and dispatched quantity of stone is in excess of annual installment, the leaseholders shall pay the royalty of the excess quantity extracted.

During test-check of settlement files of 119 leases of stone quarry (Gaya-88 and Rohtas-31) and monthly returns submitted by the leaseholders to the District Mining Offices, Gaya and Rohtas, we observed between June 2011 and April 2012 that three stone quarries were auctioned between July 2006 and May 2009 at ₹ 2.72 crore.

The leaseholders had extracted 45.91 lakh cubic feet stone valued at ₹ 67.16 lakh (at the rate of ₹ 1.79 per cubic feet in case of boulder and ₹ 1.42 per cubic feet for stone chips) between the period April 2009 and December 2010, against which they paid only ₹ 54.30 lakh. Thus failure of the MOs to verify the monthly returns submitted by the leaseholders resulted in short realisation of royalty of ₹ 12.86 lakh.

The matter was reported to the Government/Department in July 2012; their reply has not been received (January 2013).

6.8 Non-realisation of royalty and penalty for illegal mining

Under the provisions of Rule 9 (A) of the BMMC Rules, 1972, the Government may by Notification in the Official Gazette, direct that any mineral be leased out or settled by public auction/tender in the manner prescribed under Rule 52 of the BMMC Rules *ibid*. The period of quarrying lease shall not be less than five years and the leaseholder shall pay the royalty in advance in five equal installments before 31st January of each year. Rule 40 (8) of BMMC Rules prescribes that the penalty for any illegal mining includes recovery of the price of the mineral, rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority.

During test-check of settlement files of lease of stone quarry in the District Mining Office, Jamui, we observed (May 2012) that a lease of stone quarry was settled in January 2009 for five years at ₹ 5.62 lakh. Further, during site inspection, the MO found (December 2009) that the leaseholder had extracted and sold 16 lakh cubic feet (45,306.53 cubic metre) of *Murram* from the place outside his leased area.

The MO, however, lodged the FIR (December 2009) and ordered the leaseholder to pay the royalty within 30 days, but did not levy penalty of ₹ 17.22⁹ lakh considering the minimum price of the minerals equivalent to royalty for unauthorised extraction of minerals. This resulted in non-levy of penalty of ₹ 17.22 lakh for illegal mining as provided under the Rules *ibid*.

The matter was reported to the Government/Department in July 2012; their reply has not been received (January 2013).

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⁹ Calculation of royalty: $\frac{16,00,000}{35.315}$ cft = 45,306.53 cubic metre x ₹ 38 = ₹ 17,21,648.