

**CHAPTER-VI**  
**NON-TAX RECEIPTS**



## **CHAPTER VI: NON-TAX RECEIPTS**

### **Non-ferrous Mining and metallurgical Industries**

#### **6.1 Tax administration**

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 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 whereas 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.

Bihar State has minor minerals like sand, stone and earth and a few major minerals like Limestone, Mica, and Silica etc. Receipts from mines and minerals in Bihar comprise royalty, dead rent, surface rent, application fee for lease/permit/prospecting licence, pre-survey licence, penalty, fine and interest for delayed/belated payment of dues etc.

#### **6.2 Results of audit**

In course of audit of records of 35 units, out of 48 auditable units, relating to receipts from Non-ferrous Mining and Metallurgical Industries during the year 2014-15, we found non/short levy, non/short realisation of revenue and other irregularities involving ₹ 184.30 crore in 346 cases which fall under the following categories as detailed in **Table 6.1**.

**Table- 6.1**

(₹ in crore)

Sl. No.	Categories	No. of cases	Amount
1.	Non-levy of penalty for illegal procurement of minerals by works contractors	46	89.57
2.	Non-realisation of royalty	25	7.28
3.	Non/short-realisation of royalty from brick kiln owners	23	11.05
4.	Loss of revenue due to delay in notification of settlement of <i>sandghat</i>	9	14.70
5.	Non-realisation of royalty and interest thereon from the lessee of stone quarry/settlee of <i>sandghat</i>	16	1.87
6.	Non-realisation of registration fee	17	7.09
7.	Loss of revenue due to non-realisation of royalty for excess dispatch of stone/sand	19	17.54
8.	Non-execution of deed for settlement of <i>sandghat</i>	9	8.92
9.	Loss of revenue due to non-levy of penalty for illegal removal of ordinary earth	26	16.69
10.	Other cases	156	9.59
<b>Total</b>		<b>346</b>	<b>184.30</b>

During the period April 2014 to October 2015, the Department accepted non/short levy, non/short realisation of revenue and other irregularities *etc.* involving ₹ 16.93 crore in 50 cases, out of which 42 cases involving ₹ 15.50 crore were pointed out during 2014-15 and the rest in earlier years. The Department also reported recovery of ₹ 75.01 lakh in one case which was pointed out during the period 2014-15.

A few illustrative cases involving tax effect of ₹ 60.69 crore are mentioned in the following paragraphs.

### **6.3 Non-compliance of the provisions of the Acts/Rules**

*Our scrutiny of the records of the District Mining Officers revealed several cases on non-compliance of the provisions of the Acts/Rules and departmental orders as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test-check carried out in audit. Such omissions on the part of the departmental officers are pointed out in audit each year, but not only the irregularities persist; these remain undetected till an audit is conducted. There is need for the Government to improve the internal control system and the internal audit.*

#### 6.4 Non-levy of penalty for illegal procurement of minerals by works contractors

**Lack of inter-departmental coordination resulted in non-levy of penalty of ₹ 40.76 crore against the works contractors for illegal procurement of minerals.**

We observed from the revenue collection report of 20 District Mining Offices<sup>1</sup> and the district treasury records between February 2014 and January 2015 that a sum of ₹ 40.76 crore was deposited by the Works departments in shape of royalty under the head “0853 Non-ferrous Mining and Metallurgical Industries” during the period 2012-13 and 2013-14 which was deducted from the bills of the works contractors. Works departments did not send the particulars of the mineral used by the works contractors to the concerned District Mining Offices for verification. Instead the works departments, deducted the royalty from the bills of works contractors against use of minerals in violation of Rule 40 (10) of the Bihar Minor Mineral Concession (BMMC) Rules, 1972 which provides that works contractor shall purchase the minerals from lessee/permit holder and authorised dealers only and no works department shall receive the bill which the works contractors submit to recover cost etc. of mineral used by them in completion of the works unless the same is accompanied with prescribed forms ‘M’ and ‘N’ describing the names and addresses of the dealers from whom the minerals were purchased. This indicates the possibility that the minerals may not have been purchased from the permit holder/authorised dealers. Further, MOs on receipt of the deduction of royalty by the works departments did not initiate any follow up action to check if the minerals had been procured illegally and the MOs also did not raise the demand for minimum penalty at least equivalent to royalty of ₹ 40.76 crore from the works contractors through works department as prescribed under Section 21 (5) of the Mines and Minerals (Development and Regulation) Act, 1957 read with Rule 40(8) of the BMMC Rules, 1972 which stipulates that whenever any person raises without any lawful authority, any mineral from any land, the State Government may recover from such person the minerals so raised or where such minerals have already been disposed off the price thereof and may also recover from such person 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.

Thus, lack of inter-departmental coordination resulted in non-levy of penalty against the works contractors through works department to stop the illegal procurement of minerals.

<sup>1</sup> Aurangabad, Banka, Begusarai, Bettiah, Bhagalpur, Gaya, Gopalganj, Jamui, Kaimur, Khagaria, Kishanganj, Nalanda, Nawada, Patna, Rohtas, Saharsa, Sheikhpura, Saran, Siwan and Vaishali.

After this was pointed out, the Department stated (July 2015) that Rule 40(10) of the BMMC Rules clearly stipulates that where the royalty has been paid for minerals consumed by the Works Department as disclosed in the Affidavit, the concerned Mining Officer may not take action as prescribed in the Rules. The reply of the Department is not in consonance with the provision of Rule 40(10) of the Rules *ibid* as the works contractors did not submit Affidavit in Form M and particulars of minerals in Form N.

However, the Department further stated (July 2015) that necessary direction in this regard had been given to the concerned Works departments to comply the provisions of Rule 40 (10) of the BMMC Rules. Further, a committee had been constituted in pursuance of decision taken in PAC Meeting held in June 2015 to draft and prepare a road-map and works-plan for on-line verification of Form M and Form N and for establishing inter-departmental co-ordination.

### **6.5 Short realisation of royalty for excess dispatch of stone**

**Inaction on part of MOs to verify the monthly return submitted by the leaseholders resulted in short realisation of royalty of ₹ 1.19 crore for excess dispatch of stone.**

We observed between May and September 2014 in three district mining offices (Banka, Gaya and Nawada) from test-check of 29 files out of 138 leases of stone quarry and monthly returns submitted by the leaseholders that 12 stone quarries were auctioned between November 2007 and July 2009 at ₹ 3.58 crore. The leaseholders had dispatched 8.49 lakh cubic metre of minerals (stone, murrum and dust) valued at ₹ 5.83 crore between the period November 2007 and March 2014, against which they paid only ₹ 4.64 crore in contravention to the provisions of the sanction order of settlement which provides that the settlee shall pay extra royalty for quantity of stone extracted and dispatched in excess of the quantity equivalent to the bid amount. Inaction on part of MOs to verify the monthly return submitted by the leaseholders as prescribed under Rule 26 (6) of the BMMC Rules, 1972 resulted in short realisation of royalty of ₹ 1.19 crore.

After this was pointed out, the Department replied (July 2015) that in case of Gaya and Nawada, a sum of ₹ 95.01 lakh had been recovered from eight leaseholders and in Banka, notice of demand for ₹ 7.70 lakh which also includes updated interest had been issued against the leaseholder. We await further development in the case of Banka and reply in case of remaining three leaseholders of Gaya district (October 2015).

## 6.6 Short realisation of royalty and interest from lessee of stone quarry

**Inaction on part of MOs to realise the bid amount from the leaseholders of stone quarries resulted in short realisation of royalty and interest.**

We observed between March and September 2014 from test-check of files of leases of 12 stone quarries in two mining offices (Banka and Gaya) that eight stone quarries were auctioned at ₹ 2.24 crore during the period between August 2007 and May 2009. The leaseholders had to pay the bid amount in instalments on yearly basis which accumulated to ₹ 1.75 crore upto January 2013, against which the leaseholders had paid a sum of ₹ 1.20 crore only between February 2009 and May 2013 in violation of the provision of Rule 52(1), (4) and (5) of the BMMC Rules, 1972 which provides that the bid amount shall be deposited on yearly basis in equal instalment and each instalment shall be deposited before 31<sup>st</sup> January. This resulted in short realisation of royalty of ₹ 54.82 lakh. Further, interest for delayed payment of royalty was also chargeable, which amounted to ₹ 6.84 lakh as per aforesaid provision. Despite short payment of yearly instalment of royalty, action for cancellation of lease had not been initiated by the MOs against the leaseholders.

After this was pointed out, the Department replied (July 2015) that in Gaya district revenue recovery certificate had been filed in both the cases during 2015-16, in Banka district notices of demand had been issued in three cases between July 2014 and July 2015 and revenue recovery certificates would be filed in the remaining cases. In all these cases notices of demand were issued after being pointed out in audit. We await recovery in the accepted cases and further development in the remaining cases (October 2015).

## 6.7 Non/short realisation of registration fees and stamp duty on settlement of sand ghats

**Stamp duty and registration fees of ₹ 11.49 crore was not realised from the settlees of sand ghats.**

We observed between February and May 2014 from the settlement files of sand *ghats* in ten District Mining Offices<sup>2</sup> that 14 sand *ghats* were settled for a period of three calendar years on an auctioned amount of ₹ 277.43 crore with 19 settlees during the years 2010 to 2012 with enhancement of 20 *per cent* of the settlement amount for next consecutive year. Settlement of sand *ghats* was done for three years but agreement was done every year. The agreement should have also been done for three years. Had the agreement been done for three years, the Government could have earned registration fees of ₹ 11.10 crore under the provision of Section 17(1) (d) of the Indian Registration Act, 1908, which provides that lease documents of immovable property from year to year or for any terms exceeding one year shall be registered. Besides, stamp duty of ₹ 39.00 lakh was also not realised from the four settlees in accordance with the provision of Section 3 of the Indian Stamp Act, 1899.

<sup>2</sup> Arwal, Banka, Bhojpur, Jamui, Nalanda, Nawada, Patna, Rohtas, Saran and Vaishali

After this was pointed out, the Department stated (July 2015) that as per Indian Registration Act, the registration of deed for one year was optional. It was further stated that sand *ghats* were settled on yearly basis and stamp duty at the rate of three *per cent* had already been realised. The reply of the Department is not in consonance with the facts that the settlement of sand *ghats* was for three years. Further on scrutiny of the replies of the Department, we observed that MO Banka had issued notice of demand for ₹ 1.65 lakh and MO Nalanda had instituted revenue recovery certificate case for ₹ 11.34 lakh in one case each for payment of stamp duty. Thus, due to non-execution of agreement for the whole period of settlement, the Government was deprived of revenue of ₹ 11.10 crore in shape of registration fees.

### **6.8 Non-levy of penalty for illegal use of ordinary earth**

#### **Penalty of ₹ 6.64 crore was not levied on works contractors for extraction of ordinary earth without obtaining requisite quarrying permits.**

We observed between February and September 2014 from lease files/Bank Draft Register in eight District Mining Offices<sup>3</sup> that ₹ 6.64 crore was deducted/ deposited by the works contractors as royalty during the period from April 2012 to March 2014 for use of mineral in earth work. We further observed that works contractors who had removed the minor mineral had not applied for the requisite quarrying permit for the same in violation of the provision of Rule 27 and 28 of the BMMC Rules, which provides that any quarrying activities require sanction of the competent authority on payment of requisite fee. Thus, the contractors removed the earth illegally for which they were liable to pay minimum penalty at least equivalent to the amount of royalty of ₹ 6.64 crore in terms of the Rule 40 (8) of the Rules *ibid* which prescribes the penalty for illegal mining which includes recovery of the price of the mineral, rent, royalty or taxes as the case may be. However, the MOs concerned had neither levied penalty of ₹ 6.64 crore nor any action for criminal proceedings was initiated in accordance with the provision of Rule 40(1) of the BMMC Rules.

After this was pointed out, the Department stated (July 2015) that royalty for the ordinary earth (minor mineral) had been paid and the works was executed in the interest of the Government for the construction of the Road and hence penalty was not imposed under the provision of Rule 40(10) of the BMMC Rules. The reply of the Department is not in consonance with the provision of Rule 40(1) of the Rules *ibid* which stipulates that mining of ordinary earth without obtaining requisite quarrying permit is illegal and hence penalty was leviable under Rule 40(8) of the Rules *ibid*. Moreover, five MOs (Aurangabad, Bhagalpur, Jamui, Nalanda and Rohtas) had issued notices of demand for payment of penalty after being pointed out in audit.

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<sup>3</sup> Aurangabad, Bhagalpur, Jamui, Nalanda, Rohtas, Saran, Siwan and Vaishali.

## **6.9 Internal Audit**

The Internal Audit wing of any department is a special vehicle of the internal control mechanism and is generally defined as the control of all controls to enable an organization to assure itself that the prescribed systems are functioning reasonably well. There is an internal audit wing called Finance (Audit), which works under the Finance Department and internal audit of the different offices of the Government is conducted on the basis of requisitions received from the Administrative Department. The Chief Controller of Accounts can also select units for internal audit on availability of audit team. As informed by the Finance Department (July 2015), it did not conduct internal audit of the Mines and Geology Department during 2014-15.

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