

### 5.1 Results of audit

We test-checked the records of the receipts from water rates, mines and minerals, forest *etc.*, during the year 2010-11 and detected loss/non-recovery of revenue *etc.* and other deficiencies of ₹ 135.62 crore in 294 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
<b>A: Mines and Minerals</b>			
1	Non-levy of penalty against works contractors for illegal procurement of minerals	38	75.14
2	Non/short realisation of royalty and cess	37	10.49
3	Non-levy of penalty for illegal removal of brick earth	37	7.58
4	Non/short levy of auction money due to non/irregular settlement of sandghats	21	8.48
5	Non-levy of stamp duty and registration fees	7	1.64
6	Non-levy of interest	28	0.32
7	Loss due to non-levy of fine for continued contravention	4	0.23
8	Other cases	68	14.30
<b>Total</b>		<b>240</b>	<b>118.18</b>
<b>B: Water Rates</b>			
1	Loss of revenue due to non-assessment of target of irrigation	14	3.23
2	Loss of revenue due to non-raising of demand of water rates	11	9.26
3	Loss of revenue due to non-settlement of chat land	4	0.42
4	Other cases	13	0.82
<b>Total</b>		<b>42</b>	<b>13.73</b>
<b>C: Forest Receipts</b>			
1	Blocking of revenue due to non-disposal of collected/ unclaimed timber	4	0.09
2	Non-recovery of compensatory amount	1	1.54
3	Other cases	7	2.08
<b>Total</b>		<b>12</b>	<b>3.71</b>
<b>Grand total</b>		<b>294</b>	<b>135.62</b>

During the year 2010-11, the concerned Departments accepted underassessment and other deficiencies *etc.* involving ₹ 2.06 crore in 18 cases, of which one case involving ₹ 19,000 was pointed out during the year 2010-11 and the rest during the earlier years.

A few illustrative cases involving tax effect of ₹ 8.12 crore are mentioned in the succeeding paragraphs.

## 5.2 Non-compliance of the provisions of the Acts/ Rules

*Our scrutiny of the records of the District Mining Officers/Executive Engineers 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 test-check carried out in audit. Such omissions on the part of the departmental officers are pointed out by us each year, but not only do 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.*

### A: MINES AND MINERALS

## 5.3 Operation of brick kilns

### 5.3.1 Non/short realisation of royalty

#### Nine<sup>1</sup> District Mining offices

Under the provisions of Rule 26 (A) and 28 of the Bihar Minor Mineral Concession (BMMC) Rules 1992 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.

We observed from the brick kiln register, Mining Inspector's report and other relevant records kept in the individual files of the brick owners during test-check between January and April 2011 that 420 brick kilns (Category-II<sup>2</sup>: 25 and Category-III<sup>3</sup>:395) were operated in brick season<sup>4</sup> 2009-10, out of which 305 brick kilns owners did not pay due royalty of ₹ 1.61 crore while the other 115 owners made partial payment of royalty of ₹ 33.94 lakh against a total amount of ₹ 62.20 lakh. The concerned MOs did not stop their business. Thus non-initiation of follow up action by the

MOs for stopping illegal operation of brick kilns resulted in non/short realisation of royalty of ₹ 1.89 crore. Besides, simple interest of ₹ 35.63 lakh

<sup>1</sup> Arwal, Aurangabad, Buxar, Darbhanga, Hajipur, Jehanabad, Kaimur, Madhubani, and Nawada.

<sup>2</sup> Brick kilns situated in urban areas except Patna, Muzaffarpur, Gaya and Darbhanga having capacity of 35 lakh bricks.

<sup>3</sup> Brick kilns situated in rural areas having capacity of 25 lakh bricks.

<sup>4</sup> Brick season starts from the month of October every year to March of the subsequent year.

calculated from April 2010 till the previous month of audit on the royalty payable is also leviable at the rate of 24 *per cent* per annum under the rules.

After we pointed this out, MOs concerned stated that certificate cases would be instituted and action would be taken for realisation of royalty. We await further developments (October 2011).

The matter was reported to the Government/ Department in June 2011; we are yet to receive their reply (October 2011).

### 5.3.2 Non-levy of penalty for illegal removal of brick earth

#### Thirteen<sup>5</sup> District Mining Offices

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. Further, Rule 40(1) *ibid* prescribes initiation of criminal proceedings attracting punishment of simple imprisonment that may extend to six months or with fine which may extend to ₹ five thousand or both.

We observed between September 2010 and March 2011 from the demand and collection register and permit register of brick kiln owners kept in mining offices that 538 brick kilns (Category-I<sup>6</sup>: 35, II: 40 and III : 463) were operated in brick season 2009-10 without paying the consolidated amount of royalty and without

obtaining quarrying permit. We further observed that out of this, 46 brick kiln owners of five<sup>7</sup> districts had also operated their brick kilns illegally during brick season 2008-09. Despite that 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 ₹ 2.91 crore.

After we pointed this out, three<sup>8</sup> MOs stated that action was being taken as per rules while remaining MOs stated that no specific provision for imposition of penalty lies under BMMC Rules. We do not agree as the mining was done without obtaining quarrying permit and as such these cases were to be treated as illegal excavation and penalty is leviable under the Rules. We await further developments in the matter (October 2011).

The matter was reported to the Government/ Department in June 2011; we are yet to receive their reply (October 2011).

<sup>5</sup> Arrah, Arwal, Aurangabad, Buxar, Darbhanga, Hajipur, Jehanabad, Kaimur, Madhubani, Muzaffarpur, Nalanda, Nawada and Patna.

<sup>6</sup> Brick kilns situated in urban areas of Patna, Muzaffarpur, Gaya and Darbhanga having capacity of 45 lakh bricks.

<sup>7</sup> Arrah, Bhagalpur, Muzaffarpur, Nawada and Saharsa.

<sup>8</sup> Hajipur, Madhubani and Muzaffarpur.

## 5.4 Settlement of sand *ghats*

### 5.4.1 Non-realisation of interest on delayed payment

#### Banka and Bhagalpur District Mining Offices

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.

However, the Mines and Geology Department, Government of Bihar issued a notification in December 2009 for settlement and operation of sand *ghats* for the calendar years 2010-12. As per clause 17 of the said notification, if the sand *ghat* could not be settled by 31 December 2009 for the calendar year 2010, the previous settlees would be allowed to extract sands on prescribed reserve deposit for the year 2010 till 31 January 2010 or new dates of settlement, whichever was earlier. Further, as per clause 11, the settlees were required to pay 50 *per cent* of the settlement amount before operation of sand *ghats*, 25 *per cent* up to 15<sup>th</sup> of April and remaining 25 *per cent* up to 25<sup>th</sup> September for the calendar year 2010. 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 February 2011 from the settlement files of sand *ghats* in two districts for the calendar year 2010 that two settlees of sand *ghats* paid ₹ 12.81 crore against their proportionate auction amount of ₹ 15.49 crore with a delay ranging between one day and 285 days. This resulted in non-realisation of interest of ₹ 36.34 lakh on delayed payment.

After we pointed this out, the MO Banka stated that action would be taken after obtaining directives from the Department while MO Bhagalpur stated that the certificate case would be instituted against the defaulter. We await further development in this matter (October 2011).

The matter was reported to the Government/ Department in June

2011; we are yet to receive their reply (October 2011).

### 5.4.2 Loss of revenue due to delay in settlement of sand *ghats*

We observed in February 2011 from the settlement files of sand *ghats* in two<sup>9</sup> districts for the calendar year 2010 that in violation of the notification (December 2009), two sand *ghats* were settled in February 2010 i.e. with a delay of 15 days resulting in loss of Government revenue of ₹ 65.62 lakh as detailed below:

<sup>9</sup> Banka and Bhagalpur.

S.I. No.	Name of Unit	Date of settlement	Bid amount of Calendar year 2010	Sand Ghat operated by previous settlee			Proportionate amount of delay period leviable on bid amount for 2010	Difference to be realised
				No of days	Reserve price for the year 2010	Proportionate reserve price for year 2010		
1	Banka	16.2. 2010	1010.50	15	59.90	2.46	41.53	39.07
2	Bhagalpur	17.2.2010	755.00	15	108.90	4.48	31.03	26.55
<b>Total</b>								<b>65.62</b>

After we pointed this out, MO concerned stated that settlement had been done as per notification. The reply is not acceptable because sand *ghats* were required to be settled by 31 January 2010. We await further development in this matter (October 2011).

The matter was reported to the Government/ Department in June 2011; we are yet to receive their reply (October 2011).

### 5.5 Short realisation of royalty and interest from settlee of stone quarry

#### Banka and Bhagalpur District Mining Offices

Under rule 9 (A) of the BMMC Rules, 1972 the Government may by notification in Official Gazette, direct that any mineral be leased out or settled by Public auction/tender in the manner prescribed under Rule 52, *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 yearly basis in equal installments and each installment shall be deposited before 31<sup>st</sup> January. If any installment is not deposited before the 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. Rule 33 (3) of the BMMC Rules also provides that every lessee/permit holder shall submit every month to the competent officer a true and correct return for minerals in Form 'H' by the 15 of the following month to which it relates.

During test-check we observed in February 2011 from the settlement files of lessee of stone quarry and monthly returns submitted by them in two districts that six stone quarries were auctioned at ₹ 2.02 crore between July 2007 and November 2008. The settlees had to pay installment on yearly basis which accumulated to ₹ 1.57 crore upto January 2011 against which they paid a sum of ₹ 87.13 lakh only till the date of audit. Besides this, interest of ₹ 2.78 lakh on short payment/ belated payment of installment of royalty was also

chargeable. Despite the short payment of yearly installment of royalty action for cancellation of lease had not been initiated by the concerned MOs against

five settlees and in one case of Bhagalpur, though the lease was cancelled in May 2010, action for realising the dues was not taken. This omission not only violated the rules but also resulted in non-realisation of revenue of ₹ 72.56 lakh including interest.

After we pointed this out, the MO Banka stated that demand notice would be issued while MO Bhagalpur stated that action for realisation would be taken as per rules. We await further development in this matter (October 2011).

The matter was reported to the Government/ Department in June 2011; we are yet to receive their reply (October 2011).

## B: WATER RATES

### 5.6 Non-realisation of revenue due to non-raising of demand

#### Two<sup>10</sup> irrigation divisions

Under rule 3.4.1 to 3.4.10 (B) of the Bihar Flood Management and Drainage Rules, 2003 framed under the Bihar Irrigation Act, 1997, preparation of the Statement of land irrigated (*Sudkar*), cultivator-wise measurement (*Khesra*) and Demand Statement (*Khatiani*) are required to be completed yearly, by 30 November for *Kharif*, 30 April for *Rabi* and 15 June for hot weather crops by the Irrigation Department for recovery of water rates from the beneficiaries to whom water is supplied for irrigation purpose. Thereafter, this *khatiani* is required to be executed by the division itself for recovery in the light of restructuring of the Department in June 2005.

From the information furnished by the divisions, we observed between July and August 2010 that though *sudkar* for the area irrigated (1,27,839.97 acre of *kharif* and 1,10,991.12 acre of *rabi* crops) for the period 2008-10 was prepared but cultivator wise measurement (*khesra*), to facilitate the respective divisional officers to verify the correctness of the area irrigated and endorse the same to the Junior Engineers for preparation of *khatiani* (abstract of demand), was not prepared by the *Amin*<sup>11</sup>. In the

absence of *khesra* and *khatiani* the demands for collection of water rates could not be raised against the beneficiaries. This resulted in non-realisation of water rates of ₹ 1.96 crore.

After we pointed this out, Executive Engineers concerned stated between July and August 2010 that shortage of staff was the reason for non-preparation of *khatiani*.

The matter was reported to the Government/Department in June 2011; we are yet to receive their reply (October 2011).

<sup>10</sup> Ganga Pump Canal Division Chausa, Buxar; Kamala Canal Division Jainagar.

<sup>11</sup> *Amin* means a qualified person who measures the area of the land.

## C: ROAD CONSTRUCTION DEPARTMENT

### 5.7 Non-realisation of land use charges

#### Four<sup>12</sup> Road Construction Divisions

As per Resolution dated 28.03.2008 circulated vide letter no. 4881(5) WC dated 04.04.2008, the Road Construction Department, Government of Bihar decided to realise land use charge at the rate of ₹ 5,000 per km per year from agencies laying optical fibre cables, electricity lines, water supply, sewer lines etc. in the roads under the jurisdiction of the Road Construction Department. The amount was to be deposited by 30<sup>th</sup> March in advance for the next financial year. It was also applicable to those licencees who were permitted to lay optical fibre cables previously.

We observed during scrutiny of records of the divisions between February 2010 and March 2011 that six<sup>13</sup> companies were involved in using the roads under the Road Construction Department for the laying of optical fibre cable and electricity lines. However, a sum of ₹ 62.89 lakh as land use charge was not realised from the user companies for the years between 2008-09 and 2010-11.

After we pointed this out, three<sup>14</sup> Executive Engineers replied (between February 2010 and March 2011) that notices would be issued to the concerned companies for realisation of the outstanding land use charge while the Executive Engineer,

Dehri-on-Sone stated in February 2011 that demand notice had already been issued. We await report on recovery in the cases where the demand notices were issued and further developments in remaining cases (October 2011).

<sup>12</sup> Begusarai, Biharsharif, Dehri –on- Sone and Madhubani.

<sup>13</sup> Aditya Birla Telecom Ltd., Bharti Airtel Ltd., BSNL, Power Grid Corporation of India Ltd., TataTele Services Ltd. (brand name-Tata Indicom) and Vodafone Ltd.

<sup>14</sup> Begusarai, Biharsharif and Madhubani.

The matter was reported to the Government/ Department in August 2011; we are yet to receive their reply (October 2011).

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