

CHAPTER-VI
NON-TAX RECEIPTS

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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 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.

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 33 units out of 58 auditable units relating to receipts from Non-ferrous Mining and Metallurgical Industries during the year 2013-14, we found non/short levy, non/short realisation of revenue and other irregularities involving ₹ 131.53 crore in 250 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	25	42.50
2.	Loss of revenue due to non-registration of deeds of settlement of Sandghats	35	18.09
3.	Mineral excavation without approval of Mining Plan	1	5.21
4.	Non/short realisation of royalty from brick kiln owners	11	4.59
5.	Short realisation of royalty & interest from lease of stone query	13	2.68
6.	Non-levy of penalty for illegal use of ordinary earth	8	1.76
7.	Non-levy of fine for continued contravention of Acts/Rules	5	0.82
8.	Others	152	55.88
Total		250	131.53

During 2013-14, the Department accepted non/short levy, non/short realisation of revenue and other irregularities *etc.* involving ₹ 75.92 lakh in two cases, which were pointed out during the earlier years. An amount of ₹ 72,000 was recovered in two cases which were audited in 2011-12.

A few illustrative cases involving tax effect of ₹ 10.58 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 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.

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

Rule 40 (10) of the Bihar Minor Mineral Concession (BMMC) Rules, 1972 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. The Department also

notified (January 2006) that no payment of bills shall be made without the production of form 'M' and 'N' by the works contractors. It shall be the duty of the officer, who receives the said bill to send the photocopy of the forms and particulars to the concerned DMO/AMO. If contents of the forms/affidavit on verification by the concerned DMO/AMO revealed that minerals were not purchased from any authorised lessee, it shall be presumed that the concerned mineral were obtained by illegal mining and in that case said DMO/AMO shall take action as prescribed in these Rules against the maker of the affidavit.

Further Section 21 (5) of the Mines and Minerals (Development and Regulation) Act, 1957 read with Rule 40(8) of the BMMC Rules, 1972 provide 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 has 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.

We observed from the revenue collection report of six District Mining Offices¹ and the district treasury records between January and February 2014 that a sum of ₹ 5.47 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 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, though they are not authorised to do so, deducted the royalty from the bills of works contractors against use of minerals. This indicates that the minerals were not purchased from the permit holder/authorised dealers. Further, Mining Officers (MOs) on receipt of the deduction of royalty by the works department did not initiate any follow up action to stop illegal procurement of minerals and the MOs also did not raise the demand for minimum penalty at least equivalent to royalty of ₹ 5.47 crore from the works contractors through works department.

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.

After this was pointed out, the Department stated (August 2014) that if the payment of royalty for minerals used by the works contractor was made the concerned District/Assistant Mining Officer may not take penal action. The reply of the Department is not in consonance with the provision of Rule 40(10) of the Rules *ibid* which is applicable in case of submission of affidavit in Form M and particulars of minerals in Form N. Hence, the facts remains that deduction of royalty by the Works Departments against use of minerals and its remittance into treasury indicates that minerals were not purchased from the permit holder/authorized dealers and penalty should be levied in terms of the provisions of BMMC Rules.

¹ Aurangabad, West Champaran (Betiah), Jehanabad, Lakhisarai, Munger and Sheikhpura.

6.5 Mineral excavation without approval of Mining Plan

As per Rule 22 A of the Mineral Concession Rules, 1960, mining operations shall be undertaken in accordance with the duly approved Mining Plan and modification of approved mining plan during the operation of a mining lease also requires prior approval. Rule 12 of the Mineral Conservation and Development (MCD) Rules, 1988 provides that lessee shall review the Mining Plan and submit Mining Scheme to the Indian Bureau of Mines (IBM) for the next five years at least 120 days before expiry of the current plan and IBM shall communicate its approval or rejection within 90 days. Further under Rule 23B of the MCD Rules in case of a fresh grant or renewal of mining lease, the lessee shall submit a Progressive Mine Closure Plan as a component of Mining Plan. Section 21(5) of MMDR Act provides that whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where the mineral has already been disposed of, the price thereof, along with royalty.

We observed in February 2014 from scrutiny of mining lease files of Silica stone (Quartzite) in the mining office, Munger that one lessee had not submitted any Mining Plan and Progressive Mine Closure Plan for the period 2004-05 to 2011-12 and continued to engage in production and dispatch of minerals from the mine. In absence of approved Mining Plan/scheme, the MO was unable to monitor the extraction of minerals. The transit passes were also issued for dispatch of minerals without ensuring the approval of Mining Plan and Progressive Mine Closure Plan of the leases and collected royalty on the basis of monthly returns. Despite the facts that lessee did not submit the mining plan, the concerned MO issued transit passes which facilitated the lessee to despatch their minerals. This undue favour to the lessee resulted in forgoing of Government revenue of ₹ 5.21 crore in shape of penalty.

The matter was reported to the Government/Department in June 2014; we are yet to receive their reply (August 2014).

6.6 Loss of revenue and undue benefit to lessees due to non-registration of deeds of settlement of sand ghats

As per Section 17(1)(d) of the Indian Registration Act, 1908, lease documents of immovable property from year to year or for any term exceeding one year shall be registered. Further, if the document is not registered it cannot be admitted as evidence by virtue of the provisions of Section 49(c) of the Indian Registration Act, 1908.

We observed between January and February 2014 from the settlement files of sand *ghats* in six District Mining Offices² that 10 sand *ghats* were settled for a period of three calendar years on an auctioned amount of ₹ 18.07 crore in the year 2010 with enhancement of 20 *per cent* of the settlement amount for next two consecutive years. The settlees had paid only stamp duty on the settlement amount but it was not registered for the settlement period 2010-12 which

² Aurangabad, West Champaran (Betiah), Jehanabad, Kaimur (Bhabhua), Lakhisarai and Munger.

resulted in loss of revenue in shape of registration fee amounting to ₹ 2.94 crore.

Further, we observed that the condition for registration of the agreement had not been included in the notification dated 31 December 2009 issued by the Mines and Geology Department, Government of Bihar for settlement of sand *ghats* for the calendar year 2010-12, though the condition for registration of agreement was included in the notification dated 2 December 2006 for the earlier settlement of 2007-09. Thus, the Government is losing substantial revenue in shape of Registration Fees due to splitting of settlement period for the settlement period 2010-12.

After this was pointed out, the Government stated (August 2014) that as per Indian Registration (IR) Act, the deed for registration of one year was optional. It was further stated that sand *ghats* were settled on yearly basis. The reply of the Government is not in consonance with the facts that the settlement of sand *ghats* was for three years. Thus, non-invoking of provision of the Indian Registration Act for registration of the deeds for settlement of sand *ghats*, the Government was deprived of revenue of ₹ 2.94 crore in shape of registration fees.

6.7 Non/short realisation of royalty from brick kiln owners

As per Rule 26 (A) of BMMC Rules, 1972 and notifications issued in March 2001 and January 2012, the brick kilns are classified into three categories for determination of the consolidated amount of royalty. Every brick kiln owner has to obtain a permit and pay the consolidated amount of royalty in two equal installments (50 *per cent* before the commencement of kiln and rest 50 *per cent* before the month of March). Rule 28 (2) provides that every application for quarrying permit shall be accompanied by a fee of ₹ 2000. If the brick kiln owner fails to make the payment of consolidated royalty in the manner so prescribed, he shall not be allowed to carry on the business and the competent officer shall stop such business and initiate certificate proceedings for realisation of the outstanding dues under Rule 37 of the BMMC Rules.

We observed in January 2014 from the brick kiln files and Demand and Collection Register for the period 2011-12 and 2012-13 in two District Mining Offices (Kaimur and Samastipur) that 584 brick kilns were operated during brick seasons 2011-12 and 2012-13. Out of which 93 brick kilns were operated without payment of the consolidated amount of royalty and application fee and 35 brick kilns were operated by paying partial amount of royalty. This resulted in non/short realisation of royalty of ₹ 82.17 lakh from 128 brick kiln owners.

The MOs concerned neither initiated steps to stop the business nor instituted the certificate proceeding for realisation of the outstanding dues against the defaulter as per the aforesaid provisions of the BMMC Rules.

The matter was reported to the Government/Department between April and June 2014; we are yet to receive their reply (August 2014).

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

Ordinary earth used for filling or levelling 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 and further it was revised (January 2012) to ₹ 22 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(1) of the BMMC Rules 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. Further, Rule 40 (8) of the Rules *ibid* prescribes the penalty for illegal mining which includes recovery of the price of the mineral, rent, royalty or taxes as the case may be.

We observed between January and February 2014 from lease files/Bank Draft Register in two District Mining Offices (Jehanabad and Lakhisarai) that ₹ 61.38 lakh was deducted/deposited by two works contractors as royalty during the period from October 2012 to October 2013 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. Thus, the contractors removed the earth illegally for which they were liable to pay minimum penalty atleast equivalent to the amount of royalty of ₹ 61.38 lakh³ in terms of the Rules *ibid*. However, the MOs concerned had neither levied penalty of ₹ 61.38 lakh nor any action for criminal proceedings was initiated in accordance with the provision of the BMMC Rules.

The matter was reported to the Government/Department in June 2014; we are yet to receive their reply (August 2014).

6.9 Non-levy of fine for continued contravention of Acts/Rules

As per Rule 26 (A) of BMMC Rules, 1972 and the notification issued there under, brick kilns are classified into three categories in Bihar. The brick kiln owners are required to pay the consolidated amount of royalty in two equal installments before the month of March of the subsequent year. If the brick kiln owner fails to make the payment of the consolidated royalty, the competent officer shall stop such business and initiate certificate proceedings

³ Calculation:

(Amount in ₹)				
District Mining Office	Name of the contractor	Amount of royalty deposited	Period	Penalty leviable
Lakhisarai	M/s BSC-C&C 'JV'	30,93,274	Between October 2012 and October 2013	30,93,274
Jehanabad	Classic Col Construction Pvt. Ltd.	30,45,000	December 2012	30,45,000
Total		61,38,274		61,38,274

for realisation of the outstanding royalty/arrear amount under Rule 37 of the BMMC Rules.

Further, Section 21 (2) of the 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 and in the case of a continued 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.

During scrutiny of files of brick kilns and Register IX of District Mining Office, Samastipur in January 2014 we observed that 15 brick kiln owners continued to operate their brick kilns without paying the royalty and obtaining permit during the period 2010-11 to 2012-13. Although the MOs had filed revenue recovery certificate cases against the defaulter brick kiln owners between 2011-12 to 2013-14 for realisation of royalty and interest, but 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 ₹ 40.90 lakh.

After this was pointed out, the Department stated in August 2014 that imposition of penalty for continued contravention is optional as there is mentioned 'may' instead of 'shall' in the Act *ibid*. The Department further stated that action under Rule 26 (A) of the Rules *ibid* had already been initiated by the concerned Mining Officer. The reply of the Department regarding imposition of penalty was not in consonance with the fact that Section 21 (2) of Act *ibid* provide that any contravention thereof 'shall' be punishable and only quantum of penalty may vary.

6.10 Short realisation of royalty and interest from lease of stone quarry

Rule 9 A of the BMMC Rules, 1972 provides that any mineral may be leased out or settled by public auction/tender in the manner prescribed under Rule 52. As per Rule 52(1), (4) and (5) of the Rules *ibid*, the bid amount shall be deposited in yearly basis in equal installment and each installment shall be deposited before 31st January. If any installment is not deposited before prescribed period, 24 *per cent* simple interest shall be charged up to two months and after that action for cancellation shall be taken.

We observed in February 2014 from scrutiny of files of leases of stone quarry in mining office, Sheikhpura that three stone quarries were auctioned at ₹ 184.50 lakh during the period between September 2008 and August 2009. The leaseholders had to pay the bid amount in installments on a yearly basis which accumulated to ₹ 184.50 lakh upto January 2014, against which the leaseholders had paid a sum of ₹ 154.50 lakh only between September 2008 and February 2014. This resulted in short realisation of royalty of ₹ 30 lakh. Besides, interest for delay payment of royalty was also chargeable, which comes to ₹ 2.79 lakh as per aforesaid provision. Despite short payment of yearly installment of royalty, action for cancellation of lease had not been initiated by the MO against the leaseholders.

After this was pointed out, MO, Sheikhpura stated in February 2014 that notices of demand and reminders would be issued for recovery of dues. We await further development in this regards (August 2014).

The matter was reported to the Government/Department in June 2014; we are yet to receive their reply (August 2014).

6.11 Internal Audit

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. As informed by the Finance Department (July 2014), it did not conduct internal audit of the Mines and Geology Department during 2013-14.

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