

## CHAPTER – VII: Mineral Concession, Fees and Royalties

### 7.1 Results of audit

Test check of records of mining offices, conducted in audit during the year 2002-03 revealed under assessments and losses of rent, royalty, fee etc. amounting to Rs.84.00 crore in 4,696 cases, which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Non-initiation of certificate proceedings	53	1.24
2.	Non-levy of interest	2,702	37.94
3.	Non/short levy of royalties and cesses	16	3.89
4.	Non-levy of penalty/fees	498	5.14
5.	Short levy of royalty due to downgrading of coal	2	0.78
6.	Non/short levy of dead rent/ surface rent	23	5.19
7.	Non-levy of royalty on coal consumed by workmen	18	1.79
8.	Non-levy of Stamp duty and registration fee	68	0.15
9.	Non/short levy of auction money due to non settlement / irregular settlement of sand <i>ghats</i>	136	2.34
10.	Other cases	1,180	25.54
<b>Total</b>		<b>4,696</b>	<b>84.00</b>

During the year 2002-03 the concerned Department accepted under-assessment etc. of Rs.14.56 crore involved in 32 cases of which five cases involving Rs 13.77 crore were pointed out in audit during the year 2002-03 and rest in earlier years.

A few illustrative cases involving Rs 16.25 crore are given in the following paragraphs:

## 7.2 Non/short levy of royalty on minor minerals consumed in works of the Railway Department

Bihar Minor Minerals Concession Rules, 1972 provide that no person shall undertake any mining operation in any area unless he possesses a valid mining lease or permit granted for the purpose. Removing minor minerals without any valid lease/ permit is punishable with recovery of price of the mineral together with rent, royalty or taxes payable for the period during which the land was occupied for illegal mining. The said rules further provide that works contractors shall purchase minor minerals from lessees/ permit holders and authorised dealers only. Contractors are required to furnish an affidavit and particulars in prescribed forms 'M' and 'N' indicating therein the source of purchase of minerals, price paid and quantity procured alongwith bills and Works Department<sup>1</sup>, in turn, is required to forward the photocopy of the form to the Mining Department for verification of details. On verification, if the details furnished are found to be false either wholly or partly, the concerned mineral will be treated as obtained by illegal mining and the defaulter shall be liable to pay the price thereof and the Government may also recover royalty from such persons. Besides price of mineral and royalty, the Government may charge simple interest at the rate of 24 per cent per annum on rent, royalty, fee or other sum due to the Government.

### Supply of stone ballast by illegal mining

**7.2.1** Cross verification of records/returns furnished by seven lessees and two permit holders of stone ballast of two district mining offices of Bokaro and Chaibasa with the records of five works contractors<sup>2</sup> of South Eastern Railway, Kolkata revealed that the lessees had supplied 2,87,698.4274 Cu. m. of stone ballast during the period between 1997-98 and 2002-03 to the five contractors of the divisions whereas the lessees declared the supply of 96,966.50 Cu. m. only in their returns. Thus, the supply of 1,90,731.93 Cu. m. of stone ballast was made by illegal extraction /removal of minor minerals for which they were liable to pay Rs 6.69 crore as price of minerals and Rs 47.68 lakh as royalty. Besides, interest of Rs 2.81 crore was also leviable. It was seen from the records that no photocopies of form 'M' (affidavit) and form 'N' (declaration) as required under rules were received by any Mining Officers and no verification for correct payment of royalty was made. Thus, lack of action on the part of Department resulted in short realisation of Rs 9.98 crore.

<sup>1</sup> Works Department- Works Department means Department of Central or State Government including companies, corporation, undertakings and autonomous bodies of the Government engaging works contractor.

<sup>2</sup> Three Contractors of Adra Railway Division and two contractors of Chakradharpur Railway Division.

On these being pointed out, DMO, Chaibasa accepted the audit observation in April 2003. Report on final action taken and specific reply from DMO, Bokaro had not been received till October 2004.

### **Non-raising of demand for mineral consumed in manufacture of Railway concrete sleepers**

**7.2.2** Under the provisions of Bihar Minor Minerals Concession Rules, 1972 removing minor minerals without any valid lease/permit is punishable with recovery of price of minerals together with rent, royalty or taxes payable for the period during which the land was occupied for illegal mining.

During the course of audit it was noticed that, during an inspection of records of a manufacturer of railway concrete sleepers in May 2002, the Department detected illegal mining of 13,04,899 cft chips and 9,41,265 cft sand during the years 1997-98 and 2000-01. However, no action was taken by the Department to raise the demand of Rs 48.56 lakh as price of mineral and Rs 12.43 lakh as royalty.

On this being pointed, the DMO, Dhanbad stated that the case would be thoroughly examined.

The matter was brought to the notice of the Government in July 2003; the Government replied in February 2004 that an additional demand of Rs 29.85 lakh had been created in case of Dhanbad. Final replies in respect of other cases and position of recovery are awaited (October 2004).

### **7.3 Non/short levy of surface rent**

Under the Mineral Concession (MC) Rules, 1960, the holder of a mining lease is liable to pay surface rent in respect of surface area used by him for the purpose of mining operation at such rate not exceeding land revenue and cesses assessable on the land. Further, the mining operation being a commercial activity, surface rent is to be charged as for commercial rent, which is equal to one-twentieth of the market value of the land.

In four District Mining Offices, it was noticed that 14 lessees holding 23 leases of bauxite, lime stone, dolomite, iron ore, manganese and sand (stowing) used 9,158.36 acres of land for mining operation between the years 1998-1999 and 2001-02. Surface rent payable worked out to Rs 3.25 crore, against which the lessees paid Rs 0.77 lakh only in 13 leases at non-commercial rate resulting in non/short levy of surface rent of Rs 3.24 crore.

(Rupees in lakh)

Sl. no	Name of the district	No. of lessee	No of leases	Total area used (in acre)	Rent payable (Commercial) (Rs)	Rent paid (Rs)	Balance (Rs)
1	Dhanbad	1	1	86.65	10.40	---	10.40
2	Garhwa	1	4	1956.71	64.96	0.33	64.63
3	Chaibasa	9	14	6881.85	242.93	0.44	242.49
4	Lohardaga	3	4	233.15	6.74	----	6.74
<b>Total</b>		<b>14</b>	<b>23</b>	<b>9158.36</b>	<b>325.03</b>	<b>0.77</b>	<b>324.26 or Rs 3.24 crore</b>

On this being pointed out, the Mining Officers, Dhanbad and Lohardaga stated in November 2002 and January 2003 that the matter would be examined, while Mining Officer, Chaibasa stated in December 2002 that necessary direction from Government would be taken and Mining Officer, Garhwa stated in September 2002 that there was no provision to levy commercial rent under the MC Rules 1960. The reply is not tenable as no separate direction/order is required from Government since the Act provides for payment of surface rent.

The cases were reported to the Government in July 2003; the Government replied in January 2004 that there was no provision to levy Commercial rent under the MC Rules, 1960. The reply was not tenable as the above Rules empowered the State Government to specify the conditions of lease and the Government had already clarified that mining operation is a commercial activity and its rent would be fixed at the rate of one twentieth of the market value of land under the provisions of Bihar Government Estate (Khas Mahal) Manual, 1953.

#### **7.4 Revenue foregone due to non-settlement of sand ghats**

Under the Bihar Minor Minerals Concession (BMMC) Rules, 1972 the settlement of sandghat is required to be done by the Collector of the District by public auction for one calendar year. However, Government stayed the auction of sandghats in November 2001 with direction that a new policy for settlement of sandghats would be formulated. Since then, neither has any new policy for settlement of *ghats* been formulated nor have the orders for stay been withdrawn. However, the Government further instructed in 2002 that the ghats should not be auctioned till Panchayat election was held.

During the course of audit of four Mining Offices<sup>3</sup> it was noticed that 136 sand bearing areas were not settled during 2002 in accordance with the above orders. Thus, due to non-settlement of sandghats Government had to forego revenue of Rs 2.19 crore based on revenue yield for 2001.

<sup>3</sup> Chaibasa, Dumka, Jamshedpur and Lohardaga.

On this being pointed out, the Department stated that the auction was withheld at the direction of the Government. The reply is not tenable as BMMC Rules, 1972 provide for settlement of sand ghats in a calendar year, and the inordinate delay resulted in the loss of revenue to the extent of Rs 2.19 crore.

The cases were reported to the government in July 2003; the Government replied in January 2004 that the settlement of sandghats had been stopped till Panchayat Election vide order issued in November 2001. The reply was not tenable as the facts remain that the inordinate delay in formulation of new policy resulted in loss of revenue to the Government.

### **7.5 Non- levy of price of mineral for illegal mining of brick earth**

Under the BMMC Rules, 1972 and notification issued thereunder in March 1992, every brick kiln owner/ brick earth remover shall pay amount of the prescribed consolidated royalty based on category of the brick kiln before issue of permit. In case any person removes minor mineral without valid lease/permit shall be liable to pay the price thereof and the Government may also recover from him rent, royalty or taxes, as the case may be, for the period during which the land was occupied by him without any lawful authority.

In four District Mining Offices<sup>4</sup>, it was noticed that 143 brick kilns were operated during brick season 2000-01 and 2001-02 without payment of consolidated royalty and without valid permit. In no cases were demand for recovery of price of mineral raised against the defaulters. Taking the minimum price of mineral as equivalent to royalty, there was non-levy of penalty amounting to Rs 7.45 lakh.

On this being pointed out, the Assistant Mining Officers (AMO), Deoghar and Chaibasa stated that necessary action would be taken.

The cases were reported to the Government in July 2003; the Government replied in January 2004 that penalty was not leviable under the provisions of BMMC Rules, 1972 in the instant case. The reply was not tenable in view of the provisions of Rule 4 and Rule 40 (8) of the BMMC Rules, 1972.

### **7.6 Loss of revenue due to non execution of deeds of settlement**

Under the BMMC Rules, 1972, where the settlement of sand bearing areas is made by public auction, a deed of settlement shall ordinarily be executed. Under the provisions of schedule 1A of the Indian Stamps Act, 1899 where the lease purports to be for a term of less than one year, stamp duty is leviable at the prescribed rate.

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<sup>4</sup> Chaibasa, Deoghar, Garhwa and Hazaribagh.

In seven District Mining Offices<sup>5</sup>, 124 sand bearing areas were settled at Rs 1.40 crore for the years 2000 and 2001 without executing proper deeds of settlement as required under the Indian Stamp Act, 1899. Thus, non-execution of deeds of settlement resulted in loss of revenue of Rs 8.77 lakh in the shape of stamp duty and surcharge.

On this being pointed out, the Mining Officers, Godda and Bokaro stated that the matter would be examined while Mining Officer, Giridih stated in October 2001 that the matter would be referred to the Department for direction. However, the remaining four Mining Officers<sup>6</sup> stated that registration being optional, no stamp duty was payable. The reply is not tenable as a deed is required to be executed in all such cases and stamp duty is leviable in accordance with the rates prescribed in the Act.

The matter was reported to the Government in July 2003; the Government replied in January 2004 that registration being optional, no stamp duty was payable. The reply was not tenable as the sand ghat is immovable property and its registration is compulsory.

#### **7.7 Non -levy of penalty for non-submission of monthly returns**

Under the BMMC Rules,1972, every lessee or permit holder is required to submit every month a return in the prescribed form for extraction and removal of minor minerals by the fifteenth day of the following month to which it relates. In case a lessee or a permit holder fails to furnish the required return within the prescribed period, he shall be liable to pay as penalty a sum of Rs 20 for every day after the expiry of the prescribed date subject to maximum penalty of Rs 2,500.

In two District Mining Offices of Godda and Chaibasa, it was noticed that 40 lessees in 272 cases did not furnish the returns. The submission of the returns was delayed for various months during April 1999 to July 2002, yet no penalty was imposed by the assessing officers in any of the cases. Thus, the amount of penalty not levied worked out to Rs 6.80 lakh.

On this being pointed out, the AMOs stated that the cases would be examined.

The cases were reported to the Government in July 2003; the Government replied in January 2004 that an additional demand of Rs 0.12 lakh had been raised in case of the lessees of Godda. Final replies in respect of other cases and position of recovery are awaited (October 2004).

<sup>5</sup> Bokaro, Dhanbad, Garhwa, Giridih, Godda, Hazaribagh and Sahebganj.

<sup>6</sup> Dhanbad, Garhwa, Hazaribagh and Sahebganj.