

Chapter-9

Advances, Recoveries and Payments

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Construction activities impact environment on account of mining and other construction related activities. As mining activities pollute environment directly, it is desirable to ensure that mining activities are carried out strictly in accordance with prescribed rules and government instructions. The unregulated activities of illegal mining may result in severe damage to the environment. Thus, it needs to be ensured that such activities are not encouraged and all the construction material is procured from authorised legal sources. Besides, illegal mining also impacts the exchequer of the State on account of less or no recovery of royalty and cost of minerals. Audit, however, noticed serious irregularities in enforcement of government instructions in this regard.

Further, Model Bidding Document prescribed by the department contained the provision of only two interest-free advances-Mobilisation advance and Equipment advance as discussed in paragraph 2.3.1. Scrutiny of records revealed that the provisions of MBD were not scrupulously followed by Executive Engineers. In addition to these advances, the contractors were also paid other advances which were not admissible in the MBD as discussed in the succeeding paragraphs:

9.1 Unwarranted payment of secured advance

During test-check of records in test-checked districts, audit noticed that EEs paid ₹ 36.14 crore to 23 contractors during 2011-16 as interest-free secured advance against the material brought to site though there was no provision of payment of such advance in the MBD. Secured advance was paid in addition to Mobilisation and Equipment advances given in *Appendix 9.1*.

9.2 Unauthorised advance payment

Scrutiny of records in test-checked districts revealed that in addition to payment of mobilisation and equipment advance prescribed in MBD, divisions unauthorisedly paid ₹ 67.10 crore against 17 contract bonds during 2011-16 as advance payment in the name of collection of material and work done but not measured. This resulted in undue aid to the contractors as detailed in *Appendix 9.2*.

9.3 Payment of Equipment advance

Scrutiny of records in sampled districts for 2011-16 revealed the following:

- MBD prescribed for payment of equipment advance up to 90 per cent of the cost of equipment brought to the site, subject to a maximum of 10 per cent

of the contract price. The contractor was to use the advance payment to pay for equipment required specifically for execution of work. The contractor was to demonstrate that the advance payment has been used by supplying copies of invoices or other documents to the engineer.

During scrutiny of records in test-checked districts, audit noticed that though equipment advances of ₹ 204.97 crore were paid to contractors in test-checked districts during 2011-16, no document/evidence was taken by divisional officers from contractors to demonstrate that equipment for which advance payments were made were actually purchased and utilised for the specific works.

Further, scrutiny of balance sheets of concerned contractors for 2011-16 revealed that the contractors had mentioned value of Plant and Machinery under assets column as ranging between ₹ 0.70 lakh to ₹ 9.85 lakh only. This indicated that the contractors did not actually purchase required equipment from the equipment advance taken by them and the advances paid by Public works divisions were utilised somewhere else by the contractors. Thus, divisional officers failed to ensure that advances were utilised for the intended purposes and on the works for which advances were paid. As a result, equipment advance had become a source of interest-free fund during 2011-16 available to the contractors for use as they desire.

- Audit further observed that against the provision of furnishing the bank guarantee of schedule commercial bank, in 35 cases amounting to ₹ 296.70 crore, contractors submitted bank guarantees of ₹ 17.99 crore of Co-operative banks, Prathama Bank, Chartered Mercantile Bank etc., which were accepted by the divisional officers though these banks are not scheduled commercial banks. It is important to note that NHAI Works Manual specifically provided¹ that the bank guarantee issued by a Cooperative Bank shall not be accepted. Thus, the provisions of MBD were not followed and interest of the Government was not protected by the divisional officers.

9.4 Short performance security taken from contractors

Model Bidding Document² prescribed that the successful bidder shall deliver to the employer a performance security of five *per cent* of the contract price plus additional security for unbalanced bids within 10 days after receipt of letter of acceptance.

Scrutiny of records revealed that contractors in 120 cases did not submit required performance security for these works costing ₹ 269.03 crore. Short securities deposited by contractors amounted to ₹ 2.03 crore.

Audit also noticed that performance security in the form of Fixed Deposit Receipts and Bank Guarantees amounting to ₹ 17.99 crore, submitted by 35 contractors, were not proper as these were not issued by Scheduled Commercial Banks as prescribed in MBD. Thus, divisional officers violated

¹ Clause 4.38.2 (b).

² Clause 32 of ITB.

financial rules and contractual provisions and did not secure government interests adequately.

As regards performance security taken in case of contract bonds of EEs, audit observed that a sum of ₹ 2.46 crore on account of additional performance security for 148 unbalanced bids was taken short by EEs.

9.5 Deduction of retention money

Model Bidding Document³ prescribed that the employer shall retain security deposit of five *per cent* of the amount from each payment due to the contractor until completion of the whole of the construction work.

During test-check of the records in test-checked districts, audit noticed that in violation of provision of contract bonds in 57 works⁴ pertaining to 11 districts deduction on account of security deposit at the rate of five *per cent* of the amount due to the contractor, amounting to ₹ 55.11 crore was not made from the bills during 2011-16. This resulted in un-authorised aid to the contractors and consequent exposure of risk on the part of the Government.

Case study 9.1

During scrutiny of records in PD, Gorakhpur audit noticed for widening and strengthening of Sri Ram Janki road (SH-72), a contract bond was constituted by SE, Gorakhpur Circle in November 2011 for ₹ 13.07 crore. Schedule date of completion was December 2012. Audit observed that the contractor was paid ₹ 7.13 crore but required retention money (₹ 36.97 lakh) was not deducted. Due to slow progress of work by contractor, contract bond was terminated in January 2015 after two years of scheduled completion time. Recovery of ₹ 3.43 crore was calculated against the contractor which was still (August 2016) pending. Had the division deducted retention money from the bills of the contractor at least ₹ 36.97 lakh could have been recovered.

9.6 Diarisation of bills of contractors

Audit observed that public works divisions/circles have no system of properly recording receipt of bills of contractors in a diary. As a result, it was not possible to verify the delay in payment of bills or undue favour extended to some contractors by divisional officers in payment of their bills.

9.7 Royalty payment and transportation of material

Use of construction material procured from only authorised quarries is permitted in execution of road works. The contractors are therefore required to procure the construction material such as stone ballast, grit, stone dust etc. from government authorised quarries only and as a proof of such procurement

³ Clause 43.1 of Conditions of contract (Section 4).

⁴ PD, Budaun: 04, PD, Agra: 02, PD, Basti: 02, PD, Unnao: 04, CD, Budaun: 5, CD-1 Agra: 3, PD, Mainpuri: 2, PD, Gorakhpur: 4, CD-1, Basti: 7, PD, Jhansi: 1, CD-1, Unnao: 6, PD, Sambhal: 3, CD-1, Sidharthnagar: 5, PD, Gonda: 5, CD-3, Saharanpur: 3 and CD, Saharanpur: 1.

are required to obtain copy of treasury *challan* for royalty payment and transit pass (MM-11 form⁵) from the quarry for submission to the PWD divisions. Failure to submit treasury *challan* for royalty payment and transit pass (MM-11 form) would raise questions not only about the quality of construction material supplied but also about the genuineness of the source from where the material has been procured. Given the problem of illegal mining of construction material all across the country, it becomes absolutely essential for the PWD divisions to closely monitor and ensure that royalty is paid and MM-11 forms are submitted in respect of all the construction material used for the construction of roads.

The UP Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules 2002 provide that transportation of minerals without a valid Transit Pass (MM-11) is irregular. Further, as per the orders of the Government issued in February 2001, August 2002 and October 2006, the works executing agencies are required to accept MM-11 forms only after verifying their validity from the concerned District Mining Officers (DMO). Each Drawing and Disbursing Officer (DDO) is responsible for realisation of royalty. If the contractors do not produce royalty receipt in form MM-11, the DDO will deduct the royalty from the contractor's bill and deposit the same into the treasury.

Scrutiny of records in test-checked districts revealed that all divisions have been ignoring repeated orders of the Government (February 2001, August 2002 and October 2015) regarding payment of royalty on minor minerals used in construction works for which they had to take certified copies of treasury *challans*, deduct royalty and deduct cost of minor mineral in cases of failure in submission of MM-11 forms. Audit observed several major deficiencies in deduction of royalty, furnishing of MM-11 forms and payment for works by the divisions. Thus, failure in adherence to the rules in this regard not only resulted in loss to the Government, but also abetted illegal mining and adversely affected the environment as discussed below:

9.7.1 Certified copies of treasury *challans* not submitted: With a view to check the loss of revenue received from sale of minor minerals, the Government ordered (February 2001) that suppliers would submit copy of treasury *challan* as proof of pre-payment of royalty while submitting their bills of payment. It was again reiterated by the Government in August 2002 and October 2015. Audit, however, observed that in gross violation of these repeated orders of the Government, none of the divisions in test-checked districts ensured receipt of certified copies of treasury *challans* from contractors for any work, in support of payment of royalty.

9.7.2 MM-11 forms: Scrutiny revealed that MM-11 forms were not taken by the divisions in Agra (CD-1 & 2), Basti (CD-1)⁶, Gonda (PD)⁷, Jhansi (PD and CD-3) and Mirzapur (CD)⁸. During test-check of 16 works pertaining to 11

⁵ Transit pass issued by the Mining department for valid transportation of minor minerals in the State.

⁶ EE stated that MM-11 forms are taken at the time of final payment.

⁷ EE stated that MM-11 forms are taken at the time of final payment.

⁸ EE stated that MM-11 forms, in original, are sent to DMO for verification and furnished list of verified MM-11 forms.

districts it was noticed that 2,66,673 cum stone ballast; 5,74,945 cum grit and 1,82,315 cum course sand/stone dust was utilised in construction works. However, only 4,842 MM-11 forms in support of 1,24,469 cum grit and 7,820 cum course sand/stone dust were furnished by 16 divisions to audit in evidence of the minerals having been transported on valid forms. Further, scrutiny of these 4,842 number of MM-11 forms revealed the following shortcomings:

- Destination written on 2,464 MM-11 forms (51 *per cent*) was other than the district of execution, out of 4,842 MM-11 forms (02 to 94 *per cent*) as detailed in **Appendix 9.3 A**.
- In 369 cases (8 *per cent*), destination was not mentioned. This indicated that irregular MM-11 forms were accepted in large cases for transport of material. Thus, fake execution or illegal mining cannot be ruled out.
- Name of work was not mentioned in all the cases. Thus, it could not be ensured that the MM-11 forms furnished by the divisions against a particular work to audit actually pertained to that very work. It was also possible that same forms could be utilised against any work during that period.
- Audit noticed that all divisions did not cancel the MM-11 forms enclosed with bills after payment to avoid reuse in other works by the contractors.
- Work-wise detail of quantity of material required and position of MM-11 forms furnished by the contractor was also not worked out in any case. As such, it was not possible to verify whether the contractor submitted MM-11 forms for the required quantity against a particular work.

In all these cases, EEs failed to detect these deficiencies and accepted all these deficient MM-11 forms.

9.7.3 Recovery of value of minor mineral along with royalty: Section 21 (5) of Uttar Pradesh Minor Mineral Act, 1957 prescribes that in case of consumption of minerals from illegal mining, cost of mineral (generally five times of royalty) would also be recovered along with royalty. The Government also issued (October 2015) specific order in this regard. Audit, however, noticed that none of the divisions, in test-checked districts, deducted amount of royalty and also cost of mineral in 16 cases though not submitting the MM-11 forms during 2011-16. This resulted in loss to the Government and undue aid to the contractors amounting to ₹ 28.16 crore (**Appendix 9.3 B**). It also encouraged illegal mining in the State and adversely impacted the environment.

During scrutiny of records in CD (Building) and CD-2, Agra, audit noticed that MM-11 forms were not furnished by contractors in any case during 2011-16. But, the divisions neither deducted royalty nor the cost of minor mineral from the contractors which led to loss to the Government. Audit observed that against ten test-checked works of these divisions, this loss amounted to ₹ 2.29 crore. In reply, EEs stated that royalty was deducted as per order of mining department. Reply was not acceptable as the provisions of the

Act which was also reiterated by GoUP (October 2015) was not followed by these divisions.

9.7.4 Use of road construction material from unapproved quarries:

During scrutiny of records of PD, Mainpuri it was noticed that Jhansi quarry was approved for bituminous works (BM, DBM, SDBC and BC) while Ghatari and Khera Thakur quarries of Rajasthan were approved for granular works of Mainpuri by Superintending Engineer, Mainpuri circle. However, Audit observed that instead of use of material from approved quarries, contractor used material from unapproved quarries (Bhind, Muraina, Teekamgarh and Gwalior of Madhya Pradesh) for test-checked Lakhaura-Ochha road. Transit passes (Proforma-9) forms in support thereof were accepted by EE and no royalty was deducted. This resulted in loss to the Government on account of royalty (₹ 35.61 lakh) and excess cartage as discussed in succeeding paragraph.

9.7.5 Irregular payment of cartage: Rates of different items of work (GSB, WBM, WMM, BM, DBM, SDBC & BC) taken in estimates included cost of material (stone ballast/grit, dust, etc.) and cost of cartage from approved quarries to the site of works. In cases where valid MM-11 forms were not furnished or were not valid, possibility of use of material from other nearby places cannot be ruled out. Audit observed that in 170 test-checked works costing ₹ 4,787.33 crore of 17 districts, irregular payment of cartage amounting to ₹ 673.91 crore (14.08 per cent of total cost) (*Appendix 9.3 C*) was made during 2011-16. Thus, illegal mining was promoted by not adhering to the rules.

9.7.6 MM-11 forms not sent to District Mining Officers for verification:

Audit observed in test-check of records in selected districts that 33 divisions in 17 districts did not send any MM-11 forms to concerned DMOs for verification. However, PD, Gorakhpur and PD, Jhansi sent some MM-11 forms for verification to DMOs. It was noticed that, out of 123 MM-11 forms (2,561 cum grit) which were verified by DMO, 89 (72 per cent) were found genuine (1,724 cum) while 34 (28 per cent) MM-11 forms (837 cum) were found fake/tampered. Further, out of 89 forms which were found genuine, against 18 MM-11 (20 per cent) excess quantity (67 cum) was transported by overloading. EE recovered ₹ 2.73 lakh from the contractors against the recommended recovery of ₹ 5.04 lakh by DMO, Sonebhadra.

Audit sent (August 2016) five transit passes (form J) submitted in Budaun⁹ for verification to Deputy Director, Mining, Udham Singh Nagar, Uttarakhand. It was informed by Deputy Director that two transit passes (30 cum grit) were not issued by his office though these transit passes had the seal of his office. This indicated that these passes were fake.

Therefore, these 33 divisions failed to perform their tasks of verification as was their responsibility and, as a result, genuineness and validity of MM-11 forms furnished by contractors could not be verified. Failure of the divisional

⁹ CD-1, Budaun.

officers in ensuring the genuineness of the furnished MM-11 forms, resulted in aiding the contractors in furnishing irregular MM-11 forms and ultimately resulting in loss to the Government due to use of construction material from illegal mining.

9.8 Security not credited to 'Public Works Deposit'

Paragraph 617 of Financial Handbook Vol VI prescribes that percentage deductions on account of security, made from contractor's bills, should be credited to the head 'Public Works Deposits'. Model Bidding Document¹⁰ prescribed that the employer would retain security deposit of five *per cent* of the amount from each payment due to the contractor until completion of the whole of the construction work. On full completion of the construction work, half of the total retained amount would be paid to the contractor and remaining half would be paid when the defect liability period had passed and the Engineer had certified that all defects notified by the Engineer to the contractor before the end of this period had been corrected.

Audit observed that divisions in test-checked districts utilised the amount of Cash Credit Limit amounting to ₹ 108.82 crore equal to amounts deducted on account of security from contractor's bills and did not surrender it during 2011-16. Similarly, ₹ 87.88 crore was paid, out of 'Public Works Deposits' from Deposit Cash Limit or Cash Credit Limit received for other works during 2011-16 (*Appendix 9.4*).

Thus, the system of crediting amount of security deducted from contractor's bills to 'Public Works Deposits' was not followed by any division in test-checked districts during 2011-16.

The Government did not furnish reply to any of the points in this Chapter.

¹⁰ Clause 43.1 of Conditions of contract (Section 4).

