

CHAPTER-VI: NON-TAX RECEIPTS

6.1 Results of audit

We test checked the records of the receipts from water rates, mines and minerals, forest *etc.*, during the year 2009-10 and detected loss/non-recovery of revenue *etc.* and other deficiencies of ₹ 376.66 crore in 314 cases which fall under the following categories:

(₹ in crore)			
Sl. No.	Categories	No. of cases	Amount
A. Mines and Minerals			
1.	Non-initiation of certificate proceedings	21	58.14
2.	Non-levy of penalty for illegal removal of brick earth	30	9.74
3.	Non/short realisation of royalty and cess	16	1.93
4.	Non/short levy of auction money due to non/irregular settlement of sand <i>ghats</i>	08	1.41
5.	Non-levy of stamp duty and registration fees	02	1.68
6.	Non-levy of penalty against works contractors for illegal procurement of minerals	10	19.75
7.	Non/short levy of dead rent/surface rent	03	2.78
8.	Other cases	85	135.02
Total		175	230.45
B. Water Rates			
1.	Loss of revenue due to non-assessment of target of irrigation	15	13.84
2.	Loss of revenue due to non-raising of demand of water rates	15	5.96
3.	Delay in assessment of water rates	14	91.21
4.	Loss of revenue due to non-settlement of <i>chat land</i>	06	1.70
5.	Other cases	40	25.92
Total		90	138.63
C. Forest Receipts			
1.	Non-eviction of encroached forest land	04	0.35
2.	Blocking of revenue due to non-disposal of collected/ unclaimed timber	09	0.52
3.	Other cases	36	6.71
Total		49	7.58
Grand total		314	376.66

During the year 2009-10, the concerned Departments accepted underassessment and other deficiencies *etc.* involving ₹ 305.96 crore in 268 cases, of which 237 cases involving ₹ 281.58 crore were pointed out during the year 2009-10 and the rest during the earlier years.

A few illustrative cases involving tax effect of ₹ 7.73 crore are mentioned in the following paragraphs.

6.2 Audit observations

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 a test check carried out by us. 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

6.3 Non-levy of penalty against the works contractors for illegal procurement of minerals

Fourteen¹ District Mining Offices

Under rule 40 (10) of the Bihar Minor Mineral Concession (BMMC) Rules, 1972 the works contractors shall purchase the mineral from lessees/permit holders and authorised dealers only. The Works Department shall not accept any bill which the works contractors submit to recover the cost of minerals used by them in completion of the work unless the same is accompanied by an affidavit in the prescribed form 'M' and the particulars in form 'N' under the BMMC Rules describing the names and the addresses of the lessee/permit holder/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 a photocopy of the forms to the concerned District Mining Officer (DMO)/Assistant Mining Officer (AMO). If verification of the forms reveals that the minerals were not purchased from any bonafide lessee, it shall be presumed that the concerned mineral was obtained by illegal mining and in that event action should be taken against the works contractor. Rule 40(8) of BMMC Rules prescribes that the penalty for such illegal mining includes recovery of the price of the mineral, rent, royalty or taxes as the case may be.

We observed between June 2009 and February 2010 that the Works Departments did not send the particulars of the mineral used by the works contractors to the concerned DMOs for verification. Instead, the Works Departments deducted during 2008-09 royalty of ₹ 23.92 crore from the bills of the works contractors against use of minerals and released the balance payment to the contractors.

Further, the DMOs on receipt of information about

the deduction of royalty by the Works Departments through district treasury receipt schedules and details of royalty deduction by the concerned works divisions, did not initiate any follow up action to call for the copies of the form

¹ Banka, Begusarai, Bettiah, Bhagalpur, Gopalganj, Jamui, Khagaria, Lakhisarai, Motihari, Munger, Muzaffarpur, Nawada, Patna and Sheikhpura.

'M' and 'N' from the concerned Works Departments to ascertain the genuineness of mining activities.

After we pointed this out, the Government/Department replied that there is no provision under rule 40 (10) of BMMC Rules, to levy any other penalty by the mining offices if royalty is paid by works contractors. The Government/Department further stated that it is not practicable to levy penalty for minerals used in construction works in the interest of infrastructure development. We do not agree with the contention of the Department as it is not in conformity with the BMMC Rules and the Department's order of January 2006.

6.4 Operation of brick kilns

6.4.1 Non/short realisation of royalty

Under the provisions of Rule 26 (A) and 28 of the BMMC Rules 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 category of brick kiln areas after obtaining permit. Further, 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/arrear amount under rule 37 of the BMMC Rules.

We observed between June and August 2009 that in five² district mining offices, 230³ brick kilns were operated in brick season⁴ 2008-09, out of which 208 brick kilns owners did not pay due royalty of ₹ 1.07 crore while the other 22 owners made

partial payment of royalty of ₹ 7.13 lakh against a total amount of ₹ 11.80 lakh. The concerned DMOs neither stopped their business nor initiated certificate proceedings for realisation of royalty. This resulted in non/short realisation of royalty of ₹ 1.12 crore. Besides, simple interest at the rate of 24 *per cent* per annum on the royalty payable is also leviable under the rules.

After we pointed this out, the Government/Department while accepting the audit observation stated in September 2010 that the certificate cases have been filed for payment of royalty. Further developments are awaited (December 2010).

² Arwal, Aurangabad, Gaya, Jehanabad and Muzaffarpur.

³ Category-II: 19 and Category-III: 211.

⁴ Brick season starts from the month of October every year to March of the subsequent year.

6.4.2 Non-levy of penalty for illegal removal of brick earth

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 rupees five thousand or both. Besides, 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 between June 2009 and February 2010 that in 17⁵ district mining offices, 514⁶ brick kilns were operated in brick season 2008-09 without paying the consolidated amount of royalty and without valid permit. There is nothing on record about the action taken to stop the business or levy

penalty. Thus, taking the minimum price of mineral equivalent to royalty, there was non-levy of penalty of ₹ 2.67 crore. Besides, interest on the royalty payable is also leviable under the rules.

After we pointed this out, the Government/Department stated in September 2010 that action was being taken by the Departmental officers and certificate cases have been initiated for realisation of Government money. The Government/ Department further added that no specific provision for imposition of penalty lies under BMMC Rules. We do not agree as the mining was done without valid permit and as such these cases were to be treated as illegal excavation and penalty levied under the Rules. We await further developments in the matter (December 2010).

6.4.3 Illegal operation of moving brick kiln

As per Government of India, Ministry of Forest and Environment Notification (December 2001) circulated by State Government (June 2005), operation of moving brick kiln⁵ has been prohibited. In case any moving brick kiln is operated, it should be closed and penalty should be imposed and legal action should also be taken.

We observed in December 2009 from inspection reports of the Mining Inspector of district mining office, Sheikhpura that seven moving brick kilns

(category-III) were in operation during 2008-09. Neither was any penal action initiated for closing the operation of these moving brick kiln nor was any

⁵ Begusarai, Bhagalpur, Bhojpur, Gaya, Gopalganj, Jamui, Khagaria, Lakhisarai, Madhepura, Motihari, Muzaffarpur, Nawada, Patna, Rohtas, Saharsa, Sheikhpura and Supaul.

⁶ Category-I: 08, II: 33 and III : 473.

⁵ Moving brick kiln – Other than fixed brick kiln and temporary structures where bricks are manufactured without having chimney.

demand for royalty and minimum penalty equivalent to royalty in terms of Rules *ibid* raised against the defaulting brick kiln owners. This resulted in non-raising of demand of ₹ seven lakh (₹ 3.50 lakh as royalty and ₹ 3.50 lakh as penalty). Besides, interest amounting to ₹ 70,756 is also leviable.

After we pointed this out, the Government/Department while accepting the audit observation stated in September 2010 that FIRs were lodged against all the defaulters and certificate cases were also instituted against them. We await further developments in the matter (December 2010).

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

District Mining Office, Banka

Ordinary earth used for filling or leveling 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. Under rule 27 and 28 of the BMCC Rules, any quarrying activities require sanction of the competent authority on payment of requisite fee.

Rule 40(8) prescribes the penalty for illegal mining which includes recovery of the price of the mineral, rent, royalty or taxes as the case may be. 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 rupees five thousand or both.

We observed in September 2009 that a sum of ₹ 36.64 lakh was deducted as royalty from the bills of six works contractors during the year 2008-09 for use of mineral in earth work in Rural Works Division, Banka. We further observed that the works contractors who removed the minor mineral had not applied for quarrying permit for the same. Thus, the contractors removed

the earth illegally for which they were liable to pay minimum penalty equivalent to the amount of royalty i.e. ₹ 36.64 lakh in terms of the rules. But the concerned DMO neither levied penalty of ₹ 36.64 lakh nor initiated any action as per rules.

After we pointed this out, the Government/Department while accepting the audit observation stated in September 2010 that DMO, Banka was instructed to send the report after taking suitable action. Further development is awaited (December 2010).

6.6 Short realisation of royalty

DMO, Munger

Under rule 9 (A) of the BMMC Rules, the Government may by notification in the official gazette direct that any mineral contracts be leased out or settled by public auction/tender in the manner prescribed under rule 52 *ibid*. The period of quarrying lease shall not be less than five years and the settlee shall pay the royalty in advance in five equal installments before 31st January of each year. Further, if the extracted and dispatched quantity of stone is in excess of annual installment, the settlee shall pay the royalty of the excess quantity extracted.

We observed in July 2009 that three stone quarries were auctioned at ₹ 2.89 crore in March 2008. The settlees had to pay royalty of ₹ 57.81 lakh (one fifth of the auction amount) before January 2009 as the first installment for extraction and dispatch of stone.

The settlees extracted 42,56,350 cubic feet of stone valued at ₹ 76.19 lakh (at the rate of ₹ 1.79 per cubic feet) but paid only ₹ 60.18 lakh (March 2009). No demands were, however, raised for realisation of ₹ 16.01 lakh as royalty of the excess quantity of stone dispatched. This resulted in short realisation of royalty of ₹ 16.01 lakh.

After we pointed this out, the Government/Department while accepting the audit observation stated in September 2010 that the differential amount is being realised. We await further developments (December 2010).

6.7 Non-realisation of auction money and non-levy of interest

DMO, Sheikhpura

Under rule 7 of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003, grant of stockist license for stone mineral used for crusher shall strictly be on the basis of public auction/tender to the highest bidder/tenderer. In case of auction, the auction amount shall be deposited on yearly basis in equal installments within seven years and shall be deposited before 31st December. In case of default in payment of any installment till the prescribed date, simple interest at the rate of 24 *per cent* shall be charged up to six months and after that action for cancellation of license shall be taken.

We observed in December 2009 that eight stockist licensees⁷ deposited a sum of ₹ 6.73 lakh against the due amount of ₹ 12.42 lakh on account of installments of auction amount for the years 2006, 2007 and 2008 with delays ranging between 45 to 732 days. The Mines Development Officer

neither levied interest against the bidder nor was any action taken to cancel the

⁷ Stockist licensee is a person who has been granted a license to stock stone for use in the crusher within/beyond the leasehold area.

licence as per the rules. This resulted in non-realisation of auction amount of ₹ 5.69 lakh and non-levy of interest of ₹ 1.77 lakh.

After we pointed this out, the Government/Department while accepting the audit observation stated in September 2010 that the Mining Officer has been directed to ensure action as per rules and send a report. We await further developments (December 2010).

B: WATER RATES

6.8 Non-raising of demand due to non-preparation of *Khatiani*

Five⁸ irrigation divisions

Under the Bihar Irrigation Act, 1997 and the rules framed thereunder, 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 in which all existing 17 revenue divisions were substituted and the functions of these divisions were merged with 17 irrigation divisions for recovery.

We observed between July and October 2009 that *Khatiani* for 1,00,144.25 hectare of *Kharif* crop and 44,848.28 hectare of *Rabi* crop irrigated during the years 2007-08 and 2008-09 were not prepared by these divisions. This resulted in non-raising of demand and collection of water rates of ₹ 2.51 crore.

After we pointed this out, EE Tirhut Canal Division No-2, Bettiah accepted the audit observation. EE, Tirhut Canal Division,

Muzaffarpur stated that due to flood and consequent loss of crop, *khatiani* could not be prepared. The EEs of the remaining three divisions stated that shortage of staff was the reason for non-preparation of *khatiani*. We do not agree with the above explanations since neither the occurrence of floods nor the shortage of staff can be a valid reason for failure to collect revenue due to the Government.

The matter was reported to the Government in April 2010; we await their reply (December 2010).

⁸ Tirhut Canal Division no. 1, Bettiah; Tirhut Canal Division no. 2, Bettiah; Water ways Division, Jehanabad; Sone Canal Division, Khagaul and Tirhut Canal Division, Muzaffarpur.

6.9 Illegal retention of Government revenue by *Krishak Samities*

Three⁹ irrigation divisions

Under rule 3.4.1 to 3.4.14 of Bihar Irrigation, Flood Management and Drainage Rules, 2003, framed under Bihar Irrigation Act 1997, the EE, Water Resources Department based on a Memorandum of Understandings (MOU) entered into an agreement with the Water User's Association (*Samities*) to transfer the management (operation, maintenance and development of Canal System), assessment and collection of water rate for a fixed period. Under the MOU, the *Samities* were required to prepare the Demand Statement (*parcha*) as per approved rate of water charges and collect it from the water users. Thereafter, the *Samities* were required to deposit the Government share (30 per cent) into Government account and the balance amount (70 per cent) to be kept with the *Samities* to be utilised on development, maintenance and operation of the canal.

Rule 3.6.9 (b) *ibid* also required the associations to deposit the aforesaid Government share of water charges every year before 31 March (*kharif*) and before 30 June (*rabi*) in the Government account through bank drafts. Rule 3.6.10 *ibid* further required that in case the Government's share of water charges is not deposited by the *Samities* within the stipulated time, the supply of water shall be stopped in the next season and action shall be initiated for realisation of dues as per the rules.

We observed between July 2008 and October 2009 that the management of the Canal System for irrigable area was transferred to 16¹⁰ *Krishak Samities* relating to the period 2007-08 and 2008-09 as per the MOUs. The water rate recoverable from water users during 2007-08 and 2008-09 was arrived at ₹ 3.09 crore (*Kharif* : ₹ 2.08 crore, *Rabi*: ₹ 1.01 crore) calculated on the basis of area of irrigated land at the rate of ₹ 88 and ₹ 75 per acre for *kharif* and *rabi* crops respectively against which the Government share (30 per cent) amounting to ₹ 92.70 lakh was required to be deposited into the Government account by the *Samities*. The *Samities*, however, deposited only ₹ 16.92 lakh, out of which a sum of ₹ 1.29 lakh relating to

the period 2007-08 to 2008-09 was deposited in the year 2009-10 and 2010-11 by two *Krishak Samities* (Koilwar and Sakla) as reported by the concerned divisions in June 2010 leaving an unrealised balance of ₹ 75.78 lakh.

Though Para 7 of Form 7 of the MOU required the *Samities* to submit a copy of its Annual Financial Balance Sheet to the EE, no such Balance Sheet was available with the Division. Consequently, neither was the EE able to ascertain the correctness or appropriateness of expenditure of the balance 70 per cent retained by the *Samities* for the purpose of repair, maintenance and

⁹ Sone Canal Division, Ara, Ganga Pump Canal Division, Chausa, Buxar and Sone Canal Division, Khagaul, Patna.

¹⁰ Ara : 3, Buxar : 5 and Khagaul : 8.

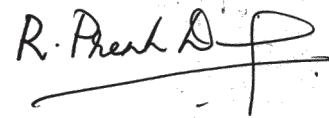
development of canal system, nor were the records of the *Samities* inspected by the concerned EEs.

It was further observed that under Sone Canal Division, Khagaul, though the MOU with the *Samities* signed in November 2002 for a period of five years had expired in November 2007, no further extension of the MOU was entered into and these *Samities* were illegally collecting water rate from the water users. However, in the other two divisions the MOUs were signed in December 2005 and were in force during audit scrutiny.

After we pointed this out, the EEs concerned stated that correspondence was being made and directions were being issued to the *Samities* for deposit of the amount. Further report is awaited (December 2010).

We reported the matter to the Government in April 2010; their reply is awaited (December 2010).

Patna
The



(PREMAN DINARAJ)
Principal Accountant General (Audit),
Bihar

Countersigned

New Delhi
The



(VINOD RAI)
Comptroller and Auditor General of India