

Chapter-VI

(Mines and Minerals)

CHAPTER VI: NON-TAX RECEIPTS

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 (Development and Regulation) Act (MMDR 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 Directors of Mines (DDMs) at headquarters level. Further there are nine Deputy Directors 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 whereas 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 Internal Audit

The Internal Audit wing of any department is a special vehicle of the internal control mechanism and is generally defined as the control of all controls to enable an organisation to assure itself that the prescribed systems are functioning reasonably well. 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. The Chief Controller of Accounts can also select units for internal audit on availability of audit team.

As informed by the Finance Department (August 2016), it did not conduct internal audit of the Mines and Geology Department during 2015-16.

Recommendation: the Department should ensure to send the requisition for internal audit to the Finance Department so that internal audit can be conducted regularly.

6.3 Results of audit

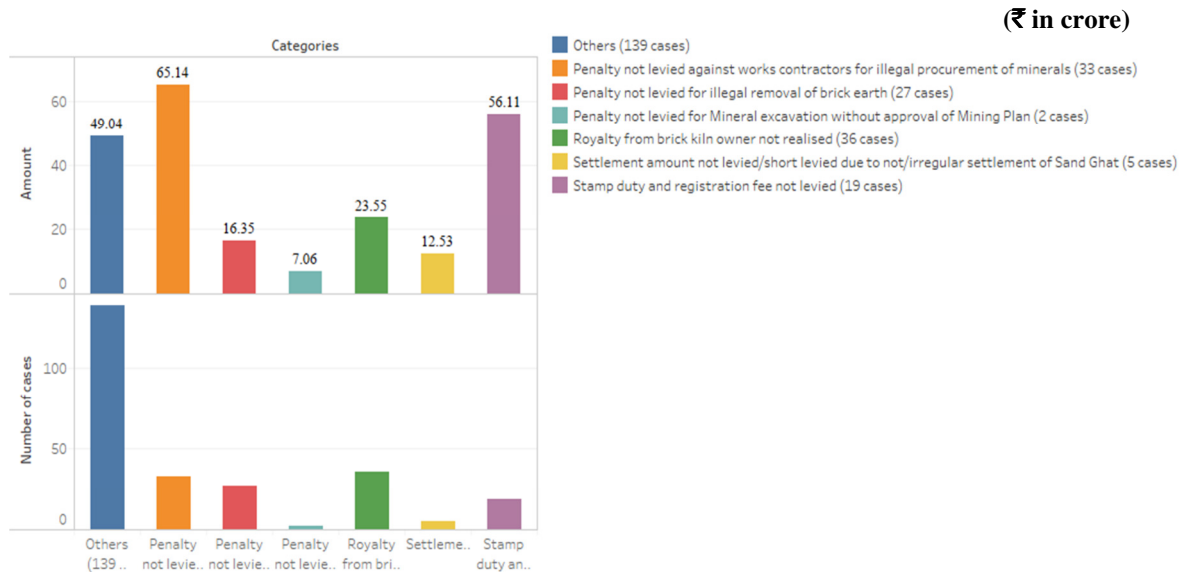
There are 56 auditable units under Mines and Geology Department, of which 35 were planned for audit during the year 2015-16 and we conducted the audit of all planned 35 units during the year. We found short levy, short realisation of revenue and other irregularities involving ₹ 229.78 crore in 261 cases which fall under the following categories as detailed in **Table-6.1**.

Table-6.1
Results of Audit

Sl. No.	Categories	(₹ in crore)	
		Number of cases	Amount
1.	Penalty not levied against works contractors for illegal procurement of minerals	33	65.14
2.	Stamp duty and registration fee not levied	19	56.11
3.	Royalty from brick kiln owner not realised	36	23.55
4.	Penalty not levied for illegal removal of brick earth	27	16.35
5.	Settlement amount not levied/short levied due to not/irregular settlement of Sand Ghat	5	12.53
6.	Penalty not levied for Mineral excavation without approval of Mining Plan	2	7.06
7.	Others	139	49.04
Total		261	229.78

The results of Audit in respect of our audit findings on receipts from mines and minerals during 2015-16 is depicted in the following **Chart-6.1**:

Chart-6.1
Results of audit



During the year 2015-16, the Department accepted short levy/not levy, short realisation of revenue and other irregularities *etc.* involving ₹ 8.97 crore in 38 cases, out of which four cases involving ₹ 4.46 crore were pointed out during 2015-16 and the rest in earlier years. The Department also reported recovery of ₹ 5.61 lakh in one case which was pointed out during the period 2014-15.

A few illustrative cases involving tax effect of ₹ 101.05 crore are mentioned in the following paragraphs.

6.4 Provisions of the Acts/Rules not complied

Our scrutiny of the records of the District Mining Officers revealed several cases where the provisions of the Acts/Rules and departmental orders were not complied with as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and are based on a test-check carried out in audit. Omissions on the part of the departmental officers in some cases were pointed out by us previously, 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.

6.5 Penalty for illegal procurement of minerals

6.5.1 Penalty for illegal procurement of minerals by works contractors not levied

Due to lack of inter-departmental coordination, penalty of ₹ 44.69 crore against the works contractors for illegal procurement of minerals was not levied.

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 Mining Officer (MO). If contents of the forms/affidavit on verification by the concerned MO reveals that minerals were not purchased from any authorised lessee, it shall be presumed that the concerned mineral were obtained by illegal mining, and in such case MO 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 provides 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 20 District Mining offices¹ and the district treasury records between March 2015 and February 2016 that a

¹ Araria, Darbhanga, Gaya, Kaimur (Bhabhua), Katihar, Kishanganj, Lakhisarai, Madhepura, Madhubani, Munger, Muzaffarpur, Patna, Purnea, Rohtas, Samastipur, Saran, Sheikhpura, Sitamarhi, Siwan and West Champaran.

sum of ₹ 44.69 crore was deposited by the 33 works divisions² in form of royalty under the head “0853 Non-ferrous Mining and Metallurgical Industries” during the period between 2012-13 and 2014-15 which was deducted from the bills of the works contractors. These works divisions did not send the particulars of the minerals³ used by the works contractors to the concerned District Mining Offices for verification. Instead the works divisions, 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, MOs on receipt of the deduction of royalty by the works divisions 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 ₹ 44.69 crore from the works contractors through works department.

Thus, due to lack of inter-departmental coordination, penalty against the works contractors through works department to stop the illegal procurement of minerals was not levied.

On this being pointed out, the Department stated (September 2016) that the Mines and Geology Department had issued various letters (between May 2002 and May 2012) to all the works divisions and instructed that no payment of bills shall be made without the production of form ‘M’ and ‘N’ by the works contractors. Further, with approval of the Chief Secretary, Government of Bihar, the Mines and Geology Department had issued (January 2016) instruction to all works divisions/Corporations in this regard. The Department further added that the Department proposed to formulate new rules to make it more stringent and steps were on to make the works department liable to ensure that the contractors procured minerals from the authorised quarries.

6.5.2 Penalty for illegal use of ordinary earth not levied

Penalty of ₹ 7.80 crore was not levied on works contractors for extraction of ordinary earth without obtaining requisite quarrying permits.

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 which was further 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

² **Rural Works Divisions**-Araria, Benipatti (Madhubani), Bettiah, Bhabhua, Darbhanga-II, Gaya West, Kishanganj, Lakhisarai, Madhepura, Manihari, Katihar, Munger, Muzaffarpur-I, II and West, Paliganj (Danapur), Patna, Purnea, Rohtas-I and II, Samastipur, Saran (Chapra)-I and II, Sheikhpura, Sitamarhi and Siwan; **Public Works Department-Road Divisions**-Darbhanga and Patna; **National Highway Divisions**- Gaya and Madhepura; **Bihar Rajya Pul Nirman Nigam Ltd.**- Darbhanga and Sitamarhi and **Bihar State Building Construction Corporation**- Works II-Patna.

³ Stone, Sand, Stone Chips, Murrum etc.

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 February 2015 and February 2016 from lease files/Bank Draft Register in eight District Mining offices⁴ that ₹ 7.80 crore was deducted/deposited by the works contractors as royalty during the period from 2011-12 to 2014-15 for use of mineral in earth work. We further observed that works contractors who had removed the minor mineral had not obtained 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 ₹ 7.80 crore in terms of the Rules *ibid*. However, the MOs concerned had neither levied penalty of ₹ 7.80 crore nor initiated any action for criminal proceedings in accordance with the provision of the BMMC Rules.

On this being pointed out, the Department stated (September 2016) that the objection should not be raised in the light of Rule 40(8), rather it should be read with the provision of Rule 40(10), which has given the discretion to the MO, not to take other penal action, if the works contractor deposits royalty.

The reply is not tenable as Rule 40(10) of the BMMC Rules is applicable in case where the work contractor deposits or pays the royalty in respect of the minerals consumed/supplied by him as shown in the affidavit in Form 'M'. This case relates to the excavation of ordinary earth without valid permit, attracting the provision of Rule 40(1) of the Rules *ibid* which stipulates that mining of ordinary earth without obtaining requisite quarrying permit is illegal. Hence penalty was leviable under Rule 40(8) of the Rules *ibid*. Moreover, MOs Bhagalpur and Kaimur stated (May 2016) that demand had been raised in all five cases between January and April 2016 against the concerned contractors for payment of penalty after being pointed out in audit.

6.6 Short realisation of stamp duty and registration fee on settlement of sand *ghats*

Stamp duty and registration fee of ₹ 47.88 crore was not realised from the settlees of sand *ghats*.

As per the new Sand Policy, 2013, an agreement relating to the settlement of sand *ghats* shall be executed with the settlee within 60 days from the date of issue of the work order in prescribed form and the registered document shall be submitted after paying stamp duty at the rate of three *per cent* and registration fee at the rate of four *per cent* of the settlement amount.

We observed between November 2015 and February 2016 from the settlement files of all sand *ghats* in nine District Mining offices⁵ that these sand *ghats* were settled in the year 2015 on a settlement amount of ₹ 737 crore for a period of five calendar years. The settlees of sand *ghats* had paid stamp duty

⁴ Bhagalpur, Kaimur, Lakhisarai, Madhepura, Madhubani, Muzaffarpur, Samastipur and Sitamarhi.

⁵ Banka, Bhagalpur, Buxar, Kaimur, Lakhisarai, Madhubani, Munger, Muzaffarpur and Patna.

of ₹ 2.83 crore against the payable stamp duty of ₹ 22.11 crore. We further observed that out of nine, eight settlees⁶ had neither paid registration fee of ₹ 22.95 crore on the settlement amount nor got the agreement registered for the settlement period 2015-19 while one settlee⁷ had paid the Registration fee short by ₹ 5.65 crore. This resulted in short realisation of revenue of ₹ 47.88 crore in shape of stamp duty and registration fee.

On this being pointed out, the Department stated (August and September 2016) that the auction amount was payable on yearly basis and hence there was no short realisation rather it was collection of revenue on annual basis. However, the matter would be referred to the Registration Department for opinion. The reply is not tenable as the settlement of sand *ghats* was done for five years and hence the agreement should have also been done for the period of five years as per the provision of Section 17(1) (d) of the Indian Registration Act, 1908, which provides that lease documents of immovable property from year to year or for any terms exceeding one year shall be registered.

6.7 Short realisation of settlement amount and interest from settlee of sand *ghats*

Inaction on part of MOs to realise the settlement amount from the settlee of the sand *ghats* resulted in short realisation of royalty and interest.

Rule 11A of the BMMC Rules, 1972 provides that settlement of sand as minor mineral will be done by public auction by the Collector to the highest bidder on annual basis. As per notification issued (March 2013) by the Department, the settlement amount shall be paid in one lumpsum for the settlement period from 1 April 2013 to 31 December 2013. Further, New Sand Policy, 2013 and notification issued (December 2013) thereunder provide that the settlement amount shall be paid in three instalments⁸. Rule 43A of the Rules *ibid* provides levy of simple interest at the rate of 24 *per cent* per annum on the outstanding rent, royalty or fee.

- We observed (June 2015) from scrutiny of files of settlement of sand *ghat* in the District Mining office, Gaya that the sand *ghat* was settled at ₹ 37.32 crore for the period 1 March 2014 to 31 December 2014. The settlee of the sand *ghat* had paid the settlement amount with a delay ranging between five days and 149 days, but the MO concerned did not levy the interest of ₹ 43.22 lakh.

⁶ **Bhagalpur:** Sainik Food (P) Ltd., Muradabad; **Buxar:** Sri Katyayni Contractors (P) Ltd. Bihta, Patna; **Kaimur:** Champion Group of Companies, Kaimur; **Lakhisarai:** Rajnandani Project Pvt. Ltd. Bander Bagicha, Patna; **Madhubani:** Md. Masiha, Laukaha, Madhubani; **Munger:** N.M. Food Product, Sri Ganganagar, Rajasthan; **Muzaffarpur:** Sri Umesh Kr., Ahiapur, Muzaffarpur; **Patna:** Brodson Commodities (P) Ltd. Ara, Bhojpur.

⁷ **Banka:** Mahadeo Enclave (P) Ltd. Jaipur, Rajasthan.

⁸ First instalment- 50 *per cent* of the settlement amount before issue of the work order;
Second instalment- 25 *per cent* of the settlement amount by 15th April; and
Third instalment- 25 *per cent* of the settlement amount by 15th September.

- We observed (February 2015) from scrutiny of files of settlement of sand *ghats* in the District Mining office, Vaishali that the sand *ghat* was settled at ₹ 21 lakh for the period 1 April 2013 to 31 December 2013 with a condition to pay the whole settlement amount in lumpsum. The settlee of the sand *ghat* had paid only ₹ 14.24 lakh with a delay ranging between 34 and 284 days and the remaining sum of ₹ 6.76 lakh was not paid till January 2015. The MO concerned did not raise demand for the outstanding settlement amount and also did not levy interest of ₹ 4.87 lakh calculated till 31 January 2015. The total revenue impact was ₹ 11.62 lakh (settlement amount: ₹ 6.76 lakh and interest: ₹ 4.86 lakh).

On this being pointed out, the Department accepted the facts and stated (September 2016) that in case of Gaya, Revenue Recovery Certificate had been instituted against the defaulter for realisation of ₹ 43.22 lakh (case no. 396/2015-16) against which the settlee had appealed in the court of Mines Commissioner for revision, while in case of Vaishali the Department stated that the action would be taken to institute the Revenue Recovery Certificate.

6.8 Amount towards Separate Corpus Fund not realised

An amount of ₹ 13.26 lakh towards Separate Corpus Fund was not realised by the concerned Mining Officers.

As per Rule 54 of the BMMC Rules, 1972 as amended by the BMMC (Amendment), Rules, 2014 read with clause 9 of the New Sand Policy 2013, the successful bidder had to deposit two *per cent* of the settlement amount annually towards Separate Corpus Fund for renovation and rehabilitation of sand extraction areas within three months from the date of theoretical sanction order for excavation of sand from the Sand *ghats*.

During scrutiny of files relating to settlement of Sand *ghats* and Bank Draft Register for the calendar year 2015-19 in two District Mining offices (Bhagalpur and Madhubani), we observed between November 2015 and January 2016 that the sanction order/work order for excavation of sand from the Sand *ghats* of these districts were accorded for the calendar year 2015 (between March and August 2015) on an amount of ₹ 4.90 crore and ₹ 78.70 lakh respectively and also for ₹ 94.44 lakh for the year 2016 in Madhubani district. The conditions of the settlement of sand *ghats* stipulate that in the second year and in the subsequent years, the settlement amount shall be equivalent to 120 *per cent* of the settlement amount for the previous years.

The settlees of the Sand *ghats* were required to deposit two *per cent* of settlement amount towards Separate Corpus Fund within three months from the date of issuance of sanction order. We, however, observed that the settlees of these Sand *ghats* did not deposit the requisite amount of ₹ 13.26 lakh⁹

⁹ Calculation:

				(Amount in ₹)
District	Name of the settlee	Year	Settlement Amount	Amount to be realised towards Corpus fund at the rate of two <i>per cent</i>
Bhagalpur	M/s Sainik Food Pvt. Ltd.	2015	4,90,00,000	9,80,000
Madhubani	Md. Masiha	2015	78,70,000	1,57,400
		2016	94,44,000	1,88,880
Total			6,63,14,000	13,26,280

towards Separate Corpus Fund till the date of audit (November 2015) even after lapse of more than three months. The concerned MOs did not initiate any action in this regard.

On this being pointed out, the Department accepted the facts and stated (September 2016) that the amount would be realised.

6.9 Provision of the conditions for settlement of sand ghats not adhered

Settlees of sand ghats were allowed to excavate sand without obtaining Environment Clearance Certificate.

Rule 11 of the BMMC Rules, 1972 as amended by the BMMC (Amendment), Rules, 2014 read with provisions of the New Sand Policy, 2013 provide that the Sand *ghats* shall be settled for five years through tender-cum-auction. The successful bidder of the Sand *ghats* shall submit the Environment Clearance Certificate within 90 days for the area less than 50 hectares and within 120 days for the area of 50 hectares and above from the date of the theoretical sanction. If the successful highest bidder failed to submit the Environment Clearance Certificate, his/her security deposit shall be forfeited and the Collector/Officer authorised by the State Government shall give an opportunity to the second highest bidder to submit the required documents within the prescribed period of time. Further, Government allowed (December 2014) extraction and dispatch of sand with effect from January 2015 after obtaining an affidavit from the settlee in proof of action being taken as per Rule to obtain the approved Mining Plan and the Environment Clearance Certificate and their subsequent submission within the prescribed time.

During scrutiny of files related to the settlement of Sand *ghats*, we observed (between May 2015 and February 2016) that in 15 District Mining offices¹⁰, the Sand *ghats* were settled for the period of five calendar years (2015-19) through tender-cum-auction between October 2014 and August 2015 to the highest 15 bidders for an settlement amount of ₹ 164.80 crore with enhancement of 20 *per cent* of the settlement amount in the next consecutive years. The theoretical sanction orders were issued between November 2014 and August 2015. The settlees of the Sand *ghats* had submitted the required affidavit and subsequently the Collectors of the concerned districts had issued work order (between December 2014 and August 2015) for extraction of the sand. Further, Mining Officers concerned had also issued transit passes for transportation of sand from the respective Sand *ghats*. However, the settlees had not submitted the Environment Clearance Certificate to the concerned authorities within the prescribed period as stated in the affidavit and also even after the end of the first year of the settlement of the Sand *ghats*. The Department took no action to instruct the Collector to cancel the said lease and forfeit the security deposit of the settlees for not furnishing the Environment Clearance Certificate as required under the Sand Policy.

We further observed that the work orders for the extraction of the sand from the settled Sand *ghats* were again issued in three districts¹¹ for subsequent

¹⁰ Arwal, Bhagalpur, Buxar, Jehanabad, Kaimur, Lakhisarai, Madhepura, Madhubani, Motihari, Munger, Muzaffarpur, Nawada, Patna, Rohtas and Vaishali (Hajipur).

¹¹ Madhepura, Madhubani and Patna.

years without ensuring the required Environment Clearance Certificate. This not only tantamounts to encouraging illegal extraction of sand but also prompted the Hon'ble National Green Tribunal to give direction (January 2016) to the State Government to stop the excavation of sand from the sand *ghats*. Further, the Department also had not issued any instruction to the concerned Collectors/Mining Officers to cancel the settlement for not complying the aforesaid provision.

On this being pointed out, the Department stated (August 2016) that presently the sand *ghats* were being operated after obtaining the Environment Clearance Certificate from the appropriate authority. The reply is not tenable as the sand *ghats* were operated up to January 2016 without Environment Clearance Certificate in violation of the provisions of the policy/rules.

Patna
The 14 February 2017


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Countersigned

New Delhi
The 17 February 2017


(SHASHI KANT SHARMA)
Comptroller and Auditor General of India