

Chapter-6

Mining Receipts

Chapter-6: Mining Receipts

6.1 Results of audit

The Accountant General test checked the records of 35¹ out of 56 auditable units of the Mines and Geology Department during 2016-17. The Department collected ₹ 971.34 crore during 2015-16 of which audited units collected ₹ 882.65 crore. Besides, audit of “**Mining Receipts: levy and collection of royalty, fee and rent**” was also undertaken between April and June 2017. Audit noticed irregularities amounting to ₹ 990.61 crore in 261 cases due to various deficiencies as detailed in **Table - 6.1**:

Table - 6.1

Sl. No.	Categories	Number of cases	Amount (₹ in crore)
1.	Audit of “Mining Receipts: levy and collection of royalty, fee and rent”	1	151.86
2.	Non/Short realisation of royalty and cesses	8	9.92
3.	Non-levy of penalty for irregular removal of brick earth /sand	44	26.56
4.	Non-levy of penalty against works contractors	30	130.52
5.	Non/short levy of stamp duty and registration fees	14	119.56
6.	Non-initiation/disposal of certificate proceedings	16	84.72
7.	Non-submission of environmental clearance certificate	16	114.25
8.	Non-realisation of settlement amounts	3	264.12
9.	Others	129	89.10
Total		261	990.61

The Department accepted (March 2018) audit observations in 92 cases amounting to ₹ 214.37 crore for 2016-17 and earlier years. The Department recovered (between April 2016 and April 2018) ₹ 1.38 crore, of which ₹ 5.84 lakh pertained to cases pointed out after April 2016 and rest pertained to earlier years.

This chapter discusses 123 cases including an audit on “**Mining Receipts: levy and collection of royalty, fee and rent**” having financial implication of ₹ 151.86 crore. Some of these irregularities continue to persist, despite similar cases being pointed out repeatedly in the Audit Reports during the last five years as detailed in **Table - 6.2**.

¹ **Deputy Director of Mines:** Darbhanga and Munger; **Assistant Director of Mines:** Ara, Gaya, Nalanda, Nawada, Patna, Purnea and Sasaram, **Mineral Development Officer:** Aurangabad, Bhagalpur, Jamui, Lakhisarai, Muzaffarpur, Sheikhpura and West Champaran; **Mining Inspector:** Araria, Banka, Begusarai, Bhabhua, Darbhanga, East Champaran, Gopalganj, Katihar, Khagaria, Kishanganj, Madhubani, Purnea, Samastipur, Saran, Sasaram, Sheohar, Sitamarhi, Supaul and Vaishali.

Table - 6.2

(₹ in crore)

Nature of observation	2011-12		2012-13		2013-14		2014-15		2015-16		Total	
	Cases	Amount	Cases	Amount								
Non-levy of penalty for illegal procurement of minerals by works contractors	0	0	11	12.26	6	5.47	20	40.76	20	44.69	57	103.18
Loss of revenue and undue benefit to lessees due to non-registration of deeds of settlement of sand <i>ghat</i>	0	0	4	3.71	6	2.94	10	11.49	9	47.88	29	66.02
Non-levy of penalty for illegal use of ordinary earth	3	0.60	3	1.21	2	0.61	10	6.64	8	7.80	26	16.86
Short realisation of settlement amount from settlee of sand <i>ghats</i>	2	0.78	0	0	3	1.84	0	0	2	0.12	7	2.74

Recommendation:

The Department may initiate systemic measures to ensure that the persisting irregularities that are routinely found during audit do not recur.

6.2 Audit of “Mining Receipts: levy and collection of royalty, fee and rent”

6.2.1 Introduction

Management of mineral resources is the responsibility of both the Central and State Government². Minerals are divided into two categories, *viz.*, major and minor minerals. Minor minerals include building stone, gravel, ordinary clay, ordinary earth, brick earth, sand and any other mineral notified by the Government of India (GOI). All other minerals such as limestone, coal, bauxite, iron ore *etc.*, are termed as major minerals.

Limestone is the only known major mineral found in Bihar. Mining receipts are the fifth largest receipt of the State and contributed between 2.65 and 3.82 *per cent* of the total receipts during the last four years.

6.2.2 Organisational set up

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). Further there are nine Deputy Directors of Mines at Divisional offices, at the district level 14 district mining offices are headed by Assistant Director of Mines/Mineral Development Officers whereas Mining Inspectors (MIs) are in-charge of the remaining 24 district mining offices who are under the control of the Collector and are responsible for levy and collection of royalty and other mining receipts.

² Entry 54 of the Union List (List-I) and entry 23 of the State List (List-II) of the Seventh Schedule of the Constitution of India.

6.2.3 Audit Objectives

The audit was conducted with a view to ascertain whether:

- the system for levy and collection of mining receipts were efficient and adequate;
- action taken in the cases of default or illegal excavation of minerals was effective;
- an effective internal control and monitoring mechanism was in place in the Department to prevent leakage of revenue; and
- provisions governing environmental aspects were adhered to in operation of mining leases.

6.2.4 Audit Criteria

The audit criteria for the Audit was derived from the following sources:

- Mines and Minerals (Development and Regulations) (MMDR) Act, 1957;
- Mineral Concession (MC) Rules, 1960;
- Mineral Conservation and Development (MCD) Rules, 1988;
- Bihar Minor Mineral Concession (BMMC) Rules, 1972 (as amended in 2014);
- Bihar Financial Rules;
- Bihar Budget Procedure;
- The Bihar and Orissa Public Demands Recovery (PDR) Act, 1914;
- Environment (Protection) Act, 1986, Environment Impact Assessment-2006 and 2016; and
- Notifications and circulars, executive and Departmental orders and instructions issued by the Department from time to time.

6.2.5 Scope and Methodology

Twelve out of 34 revenue districts were selected for detailed audit scrutiny. Eight districts³ were selected randomly through Interactive Data Extraction Analysis (IDEA) software. Four districts⁴ were selected on the request of Principal Secretary, Mines and Geology Department. Besides, office of the Director of Mines being controlling office at the headquarter level was also selected. The audit was conducted between April and June 2017. The records of the office of the Director, Mines and Geology and 12 District Mining Offices (DMOs) were examined for the period from April 2013 to March 2017. The objectives of the audit were discussed in the entry conference held on 11 April 2017 with the Principal Secretary, Mines and Geology Department. An exit conference was held on 17 October 2017 with the Special Secretary, Mines and Geology Department in which the audit findings were discussed. Replies/comments have suitably been incorporated in the relevant paragraphs. Similar audit observations noticed during compliance audit of other than selected units⁵ have been included in the concerned paragraphs.

³ Aurangabad, Bhojpur, Gaya, Lakhisarai, Nawada, Purnea, Rohtas and Sheikhpura

⁴ Banka, Jamui, Patna and Saran

⁵ Araria, Bhabhua, Bhagalpur, East Champaran, Gopalganj, Kishanganj, Muzaffarpur, Nalanda, Saharsa, Sitamarhi, Vaishali and West Champaran.

6.2.6 Acknowledgement

The Indian Audit and Accounts Department acknowledges the co-operation of the Mines and Geology Department in providing necessary information and records.

6.2.7 Trend of revenue

Receipts under the Major Head "0853-Non-ferrous Mining and Metallurgical Industries" mainly consist of royalty. Other receipts under this head include application fees, licence fees, dead rent, surface rent, penalties for illegal mining and interest for delayed payment of dues *etc.*

According to the provisions of the Bihar Financial Rules, the responsibility for preparation of budget estimates of revenue receipts is vested in the Finance Department, who will obtain information from the concerned Administrative Department. The Secretary, Mines and Geology Department is responsible for compilation of the correct estimates and sending it to the Finance Department. In case of fluctuating revenue, the estimates should be based on a comparison of the last three years' receipts.

Actual receipts under the Major Head "0853– Non-ferrous Mining and Metallurgical Industries" (Mining Receipts) against the budget estimates (BEs) during the period 2013-14 to 2016-17 along with the total non-tax revenue and total revenue during the same period is in **Table - 6.3**.

Table - 6.3

(₹ in crore)

Year	Budget estimates	Actual mining receipts as per Finance Account	Receipts as per Department	Total non-tax revenue	Total revenue of the State	Percentage of variation (col. 2 to 3)	Percentage contribution by the mining sector to total non-tax revenue of the State (Col. 3 to 5)	Percentage contribution by the mining sector to total revenue of the State (Col. 3 to 6)
1	2	3	4	5	6	7	8	9
2013-14	641.08	569.14	550.12	1,544.83	21,505.51	(-) 11.22	36.84	2.65
2014-15	750.00	879.87	859.35	1,557.98	22,308.21	(+) 17.32	56.48	3.94
2015-16	1,000.00	971.34	944.54	2,185.64	27,634.82	(-) 2.87	44.44	3.51
2016-17	1,100.00	997.60	994.10	2,403.11	26,145.37	(-) 9.31	41.51	3.82

(Source: Finance Accounts and budget documents of Government of Bihar)

Audit examined the budget files in the Mines and Geology Department and the Finance Department and observed that there was marginal variation between budget estimates and the receipts during 2015-16 and 2016-17. Audit further observed that the Mines and Geology Department did not reconcile Accounts with the Accountant General (Accounts and Entitlement), as required under the Bihar Financial Rules.

6.2.8 Cost of collection

The gross collections from mining receipts, expenditure incurred on the collection and the percentage of such expenditure to gross collection during 2013-14 to 2016-17 are mentioned in **Table - 6.4**.

Table - 6.4

Year	Total mining receipts (₹ in crore)	Total expenditure on collection of revenue (₹ in crore)	Percentage of expenditure on collection in neighbouring States			Percentage of expenditure on collection in Bihar
			Jharkhand	Odisha	West Bengal	
2013-14	569.14	13.97	0.29	0.66	10.38	2.45
2014-15	879.87	13.96	0.31	0.88	9.63	1.59
2015-16	971.34	12.42	0.30	0.63	1.47	1.28
2016-17	997.60	11.85	0.32	0.66	1.27	1.19

(Source: Finance Accounts and budget documents of Government of Bihar and other states)

Audit findings

Test check of 80 out of 159 mining leases in selected mining offices revealed major irregularities in 14 cases having financial implication of ₹ 71.76 crore pertaining to the period 2013-14 to 2016-17. Mineral-wise number of leases and revenue collected thereon versus number of leases test checked and audit findings during the period is mentioned in **Table - 6.5**.

Table - 6.5

Name of Minerals	Total no. of leases in selected districts	No. of leases test checked	Percentage of leases test checked	Total collection of revenue in selected units during 2013-17 (₹ in crore)	Financial impact of audit observations (₹ in crore)
Limestone	10	5	50	3.03	9.69
Mica	4	2	50	0.48	8.67
Silica sand	1	1	100	0.01	0.01
Stone	123	65	52.85	309.55	4.30
Sand	21	7	33.33	1,444.99	49.09
Total	159	80	50.31	1,758.06	71.76

Irregularities observed in audit are discussed in succeeding paragraphs:

6.2.9 Position of Certificate Cases

The BMMC Rules provides for recovery of the amount of rent, royalty, penalty as a public demand under the Bihar and Orissa Public Demands Recovery (PDR) Act, 1914. Further, as per Certificate Manual, the requiring officer (RO) and the certificate officer (CO) are jointly responsible for the speedy disposal of certificate cases⁶.

Audit observed in July 2017 in the office of the Director of Mines that 41,438 cases involving ₹ 271.54 crore were pending in the State as on 31 March 2017. Of this, 16,608 certificate cases involving ₹ 152.34 crore were pending as on 31 March 2017 in the 12 selected DMOs as given in the **Table - 6.6**:

⁶ **Certificate case:** When the certificate officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office.

Table - 6.6

(₹ in crore)

Year	Opening Balance		Certificate cases filed during the year		Certificate cases disposed off		Closing Balance	
	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount	No. of cases	Amount
2013-14	14,495	98.07	504	37.79	72	6.66	14,927	129.21
2014-15	14,927	129.21	230	4.07	16	0.97	15,141	132.31
2015-16	15,141	132.31	1408	25.42	144	8.22	16,405	149.52
2016-17	16,405	149.52	245	4.24	42	1.41	16,608	152.34
Total			2,387	71.52	274	17.26		

Audit observed that for speedy disposal of certificate cases the power of certificate officer was transferred (October 2016) to the concerned District Certificate Officer. However, the records of certificate cases were transferred to District Certificate Officers during the period December 2016 to October 2017 with a delay of two months to one year. Audit further observed that the Principal Secretary directed (February 2017) District Collectors to ensure quick disposal of certificate cases which includes holding of weekly meeting with district mining officers in which reconciliation of register 'IX'⁷ and register 'X'⁸ could be done and to intensively monitor the cases of big defaulters by preparing a list of defaulters having arrears of more than ₹ 10 lakh separately. However, Audit observed that weekly meetings to reconcile register 'IX' and 'X' were not held in any of the test checked DMOs and in five⁹ DMOs, list of defaulters having arrears of more than ₹ 10 lakh was not prepared.

In response to the audit observations, the Department stated (August and October 2017) the same fact that the power of disposal of certificate case was transferred (October 2016) to the Sr. Deputy Collector of the concerned district for speedy disposal of cases. However, the Department did not explain as to why it took two months to one year in transferring the certificate cases to concerned Sr. Deputy Collectors. Further, reasons for non-conducting of weekly meeting by the District Collectors with the District Mining Officers to reconcile register 'IX' and register 'X' and monitor the cases of big defaulters having arrears of more than ₹ 10 lakh separately were not furnished to Audit.

Recommendation:

The Government/Department should put in place a monitoring mechanism to ensure holding of weekly meetings of district certificate officer with concerned district mining officers, reconciliation of register 'IX' and register 'X' and following up of cases for their speedy disposal.

6.2.10 Manpower management

The cadre-wise sanctioned strength and men-in-position of the Department (during 2013-14 to 2016-17) is given in the **Table - 6.7:**

⁷ Register 'IX' is a register of requisitions and is maintained by the requiring officer.

⁸ Register 'X' is a register of certificate and is kept up by the certificate officer.

⁹ Banka, Bhojpur, Rohtas, Saran and Sheikhpura.

Table - 6.7

Name of the posts	2013-14			2014-15			2015-16			2016-17		
	Sanctioned strength	Working strength	Shortage (percentage)	Sanctioned strength	Working strength	Shortage (percentage)	Sanctioned strength	Working strength	Shortage (percentage)	Sanctioned strength	Working strength	Shortage (percentage)
DDM	8	4	4 (50)	8	4	4 (50)	8	2	6 (75)	8	1	7 (87.5)
ADM	11	4	7 (63.64)	11	4	7 (63.64)	11	3	8 (72.72)	11	3	8 (72.72)
MO	25	11	14 (56)	25	8	17 (68)	25	7	18 (72)	25	6	19 (76)
MI	38	13	25 (65.79)	38	13	25 (65.79)	38	9	29 (76.32)	38	7	31 (81.58)
Head clerk	23	1	22 (95.65)	23	1	22 (95.65)	23	1	22 (95.65)	23	0	23 (100)
Clerk	76	60	16 (21.05)	76	60	16 (21.05)	76	54	22 (28.95)	76	53	23 (30.26)

(Source: Administrative Reports of the Mines and Geology Department)

As is evident, the shortages in all cadres increased over the years. The vacancies in Mines Inspector (MI) and Mining Officer (MO), who are mainly responsible for operational efficiency of the Department was notably high. The huge vacancies in the cadres of MI and MO are adversely affecting the collection of the revenue and checking of illegal mining in the state as given in succeeding paragraphs.

Due to shortage of manpower, the Department did not deploy any official at any of the six integrated check posts of the State situated on the interstate boundaries which were required to prevent and detect transportation of minerals excavated illegally. The Department transferred (October 2016) the power of certificate officer from its own officer (Deputy Director of Mines) to the concerned district certificate officer of the General Administration Department. Similarly, the Department also transferred (November 2016) the power of MO relating to verification, inspection of brick kilns and collection of royalty therefrom to concerned circle officers of the Revenue and Land Reforms Department. However, the Mining Department does not have any authority under the BMMC Rules to delegate its power of collection of revenues from brick kiln owners to officers of any other Department.

In response to the audit observation, the Department stated (July and August 2017) that Bihar Staff Selection Commission (BSSC) was requested (February 2014) for recruitment of 23 MIs and Bihar Public Service Commission (BPSC) was requested (May 2014) for recruitment for 12 MOs. However, it was observed that the Department failed to address the queries of the BSSC and BPSC in time. Thus, the Department is also responsible for the failure to recruit MIs and MOs even after lapse of four years since requisitions were made.

Recommendation:

The Department should take necessary steps to fill up the critical posts urgently and execute its power through its own officers.

6.2.11 Irregular removal of mineral

As per the MC Rules read with the MCD Rules and the MMDR Act, mining operations of major minerals are to be undertaken in accordance with the Mining

Plan (MP) duly approved by Indian Bureau of Mines (IBM). Notification of Ministry of Environment and Forest (MoEF) (14 September 2006) read with judgement¹⁰ of the Supreme Court (February 2012) stipulate environmental clearance for new or existing projects impacting environment. The MCD Rules further provide for submission of MP to IBM for the next five years at least 120 days before expiry of the current plan and intimation of approval or rejection by IBM within 90 days of the receipt of the MP. The MMDR Act further provide that the State Government may recover from any person raising any mineral without lawful authority, the mineral so raised or the price thereof, along with royalty. As per the notification issued by the Government of India in February 2015, all leases of minerals are required to be settled through auction.

6.2.11.1 Excavation of limestone without approved Mining Plan, Environmental Clearance and renewal of lease

The District Mining Officer, Rohtas neither stopped the illegal mining of limestone nor levied penalty of ₹ 9.69 crore despite having knowledge of mining operation without approved mining plan, environmental clearance and renewal of lease.

Audit observed in DMO, Rohtas that one lease of limestone (area 30.05 acre) expired in December 2012. The lessee had applied (November 2011) to the Department for renewal of lease without mining plan and environmental clearance. Further, the NOC to carry out mining operation was also refused (April 2012) by the Divisional Forest Officer as the lease area was situated near Kaimur Wildlife Sanctuary. The Mines Commissioner rejected (3 October 2017) the application for renewal of lease after the case was disposed of (May 2016) against the lessee in the Bihar High Court. However, the Commissioner took 18 months after the disposal of the Court case to reject the renewal application. In the meantime, the lessee continued to excavate the limestone illegally till March 2017 without approved mining plan, environmental clearance and renewal of lease as evident from the returns furnished by the lessee in the DMO, Rohtas. The concerned MOs, despite having knowledge of the illegal mining being carried out, neither stopped the mining nor levied the penalty of ₹ 9.69 crore¹¹ (equivalent to price of mineral excavated) during period from December 2013 to March 2017.

In response to the audit observation, the Department stated in the exit conference (17 October 2017), that application of mining plan for excavation of limestone was pending with IBM since 14 February 2017 and further stated that the lease of limestone would be cancelled. The Department's reply does not explain as to why the concerned MOs allowed the illegal mining operation for more than four years and also did not levy penalty.

¹⁰ Deepak Kumar vs. State of Haryana (2012)

¹¹

Name of Districts	Name of Mineral	Name of lessee	Quantity of mineral	Cost of mineral (Amount in ₹)
Rohtas (Sasaram)	Limestone	Kalyanpur Cements Ltd.	12,95,368.39 MT (from 2013 to 2017)	9,69,09,194.00

Recommendation:

The Department should take appropriate action on erring departmental officers and criminal action against the mining operator for allowing/undertaking mining operations without approved mining plan, environmental clearance and renewal of lease.

6.2.11.2 Excavation of mica and silica without approved mining plan, environment clearance and renewal of leases

MOs did not levy penalty of ₹ 8.69 crore and allowed mining of mica and silica for four to 13 years without approved mining plan, environmental clearance and renewal of the leases.

Audit observed in two DMOs (Nawada and Rohtas) that two mining leases of mica (Nawada) having area of 41.81 acres and 501 acres expired in March 2003 and September 2006 respectively and one mining lease of silica (Rohtas) having area of 850 acres expired in December 2013. Lessees of these mines applied for renewal of leases (Mica: 2002 and March 2005; Silica: March 2013) to the concerned MOs. These applications were forwarded by the concerned MOs to the Department in March 2003, September 2005 and May 2016 respectively. The lessees failed to submit Mining Plan approved by Indian Bureau of Mines (IBM) and no objection certificate (NOC) under the Forest Conservation Act, 1980 was not issued to the lessee by the Ministry of Environment and Forest (MoEF), Government of India as the leased mines fell under the forest area. Therefore, the applications for renewal of these leases were rejected by the Director of Mines in March 2017, November 2016 and September 2017 respectively on the recommendation (May 2014) of the Collectors concerned. However, these lessees were allowed to continue with mining operations till June 2016, November 2016 and December 2016 respectively as is evident from their monthly returns and payment of royalty. The concerned MOs did not levy penalty amounting to ₹ 8.69 crore¹² and allowed the mining operations for four to 13 years without approved mining plan (from IBM), environmental clearance and renewal of the leases.

In response to the audit observation, the Department replied in the exit conference (October 2017), that application for renewal of leases of mica and silica were rejected (Mica: November 2016 and March 2017; Silica: September 2017) and further stated that action would be taken for auction of lease as per provision of new Bihar Minor Mineral (BMM) Rules, 2017.

12

(Amount in ₹)

Name of District	Name of Mineral	Name of lessee	Quantity of mineral (in kilo gram)	Cost of mineral
Nawada	Mica	M/s Chhaturam	1,57,41,780	3,55,42,951
Nawada	Mica	M/s Sharda Mica	92,92,000	5,11,94,000
Rohtas (Sasaram)	Silica Sand	M/s Dehri-On-Sone Labourers Co-operative Society	2,90,70,000	1,13,290
Total				8,68,50,241

However, the Department did not provide reasons for non-levy of penalty and allowing mining operation for four to 13 years without approved mining plan, environmental clearance and renewal of the leases. The Department did not explain also the reason for inordinate delay in rejecting the applications for renewal of leases.

Recommendation:

The Department should take appropriate action on erring departmental officers and criminal action against the mining operator for allowing/undertaking mining operations without approved mining plan, environmental clearance and renewal of lease.

6.2.11.3 Non-levy of penalty for irregular procurement of minerals by works contractors

MOs failed to ensure non-payment of the works contractors' bills submitted without forms M and N and they also failed to levy penalty of ₹ 67.39 crore on works contractors for procurement of minerals from unauthorised sources.

The BMMC Rules read with the MMDR Act require works contractors to procure minerals from authorised lessee/dealer/permit holders and in case of violation a minimum penalty equivalent to royalty is leviable apart from price of the mineral. For verification of procurement of mineral from authorised source, the BMMC Rules further prescribe for submission of affidavit in form 'M' which contains names and addresses of the dealers from whom the minerals were purchased and particulars of minerals in form 'N' to be accompanied with bills submitted by the works contractors. The Department also directed (January 2006) that no payment of bills shall be made by the works departments without the production of forms 'M' and 'N' by the works contractors.

Audit observed in 12¹³ test checked DMOs that during the year 2015-16 and 2016-17 royalty amounting to ₹ 30.72 crore was deducted by the works divisions from bills of works contractors who had not submitted required forms M and N and deposited into government account through concerned MOs. The challans through which the deducted royalty was deposited, contained the name of contractors. Thus the MOs had information about contractors who used the minerals procured from unauthorised sources. Despite this, the concerned MOs did not levy minimum penalty equivalent to royalty of ₹ 30.72 crore from these works contractors.

Similar irregularity was also noticed in the records of other 12 District Mining Offices¹⁴, where Audit found that a sum of ₹ 36.67 crore was deducted from bills of works contractors who did not submit required forms M and N during 2014-15 and 2015-16 but the penalty of ₹ 36.67 crore was not levied.

¹³ Aurangabad, Banka, Bhojpur, Gaya, Jamui, Lakhisarai, Nawada, Patna, Purnea, Rohtas, Saran and Sheikhpura.

¹⁴ Araria, Bhabhua, Bhagalpur, East Champaran, Gopalganj, Kishanganj, Muzaffarpur, Nalanda, Saharsa, Sitamarhi, Vaishali and West Champaran.

In response to the audit observation, the Department stated (August 2017) that if the contractors paid the royalty voluntarily, then, as per proviso to Rule 40 (10) of the Rules *ibid* the concerned MOs might not impose penalty.

The reply of the Department was incorrect and is an after thought. Proviso of Rule 40 (10) of the Rules *ibid* would be applicable only if the works contractor submits affidavits in form M and in the instant case the works contractors did not submit such affidavits. There is also no record of the MOs deciding on the basis of affidavits not to impose penalty.

The Audit Reports for the years 2012-13 to 2015-16 had reported non-levy of penalty by the MOs amounting to ₹ 103.18 crore in 57 cases where royalty was deducted from bills of works contractors without ensuring form M and N. However, this irregularity still persist indicating that adequate measure was not taken in this regard by the Department.

Recommendation:

The Department should ensure non-payment of the works contractors' bills submitted without forms M and N and levy of penalty on works contractors for procurement of minerals from unauthorised sources. The Department should also take appropriate departmental and other action against erring MOs.

6.2.11.4 Irregular removal of brick earth without valid permit

The BMMC Rules provide that no person shall undertake any mining operation in any area without valid permit and whoever removes minor minerals without valid permit shall be presumed to be a party to the illegal removal of the minor mineral and shall be liable to pay penalty.

Audit observed in nine¹⁵ out of 12 test checked DMOs that out of 1,947 brick kilns, 1,830 brick kilns were operated without valid permit during the period between 2015 and 2017. However, the operators paid royalty including application fee. Though the concerned MOs were aware of operation of brick kilns without valid permit, they failed to take required action to stop the illegal operation.

In response to the audit observation, the Department replied in the exit conference (October 2017), that permit could not be issued, since the brick kiln owners failed to obtain the Consent to Establish (CTE) and Consent to Operate (CTO) from Pollution Control Board. It was further stated that environmental clearance was pending due to non-establishment of DEIAA (District Environment Impact Assessment Authority) at district level. However, permit would be issued before commencement of operation of brick kilns. The reply is not acceptable. The reason for non-establishment of DEIAA was delay by the concerned district collectors to nominate expert person for DEIAA as required under notification of State Government. Further, it was the responsibility of the brick kiln operators to secure the necessary pollution and other clearances, without which, the MOs should not have permitted the operation of brick kilns.

¹⁵ Aurangabad, Gaya, Jamui, Nawada, Patna, Purnea, Rohtas, Saran and Sheikhpura.

Recommendation:

The Department should stop operations of brick kiln without valid permit till issue of consent to operate and consent to establish required for valid permit.

6.2.11.5 Prevention of illegal mining

Required number of meetings of task force intended for prevention of illegal mining was not held in six out of 12 selected districts and in the remaining six districts meeting of task force was not held at all.

As per circular (September 2005) of the Mines and Geology Department, a task force was to be constituted in each district for prevention of illegal mining and overloading. The Department issued (January 2010) further instructions to each district collector to hold meeting of the Task Force at least once a month and to send action taken report to the Department in first week of every month. The task force was mandated to prevent illegal mining, to check mining areas, to inspect brick kilns and to inspect sand settlement areas.

Audit observed in six¹⁶ out of 12 test checked DMOs that during 2016-17, only 18 against the required 72 meetings of task force were held. Audit further observed that the task force did not meet in the remaining six districts and security personnel were made available to only one out of 12 test checked districts which too was subsequently withdrawn due to non-payment of their charges as required funds were not provided by the Department to the DMO. It is pertinent to mention here that in those districts where meetings of task force were held, there were 12,110 instances of inspections/search and seizure for action against illegal mining wherein ₹ 3.65 crore was recovered.

In response to the audit observation, the Department stated (August 2017) that in light of decision taken in a meeting headed by the Chief Secretary in May 2017, necessary instructions for holding of weekly meeting were issued to all District Magistrate/Superintendents of Police.

The Department in the exit conference (October 2017) accepted the audit observation and stated that an exclusive chapter has been incorporated in the new BMM Rules, 2017 for prevention of illegal mining and further action would be taken accordingly.

Recommendation:

The Department should ensure that meetings of task force are held as prescribed to monitor and prevent illegal mining.

¹⁶ Gaya, Jamui, Patna, Rohtas, Saran and Sheikhpura.

6.2.12 Non/short realisation of revenue

6.2.12.1 Non-forfeiture of security deposit

Concerned District Collectors failed to cancel the mining lease of stone quarries and forfeit the security deposit of ₹ 4.30 crore in cases where the lessees did not submit required documents within stipulated time.

As per the BMMC Rules, 1972 read with notification (August 2014) of Mines and Geology Department the formal lease of stone mining is to be executed by the Collector after submission of required documents¹⁷ and due instalment of settlement amount by the settlee within 120 days from the theoretical sanction¹⁸. In case of failure, the order sanctioning the lease shall be deemed to have been revoked and in that event, the application fee and the security deposit shall be forfeited.

Audit of four¹⁹ out of 12 DMOs indicated that 15 stone leases were settled (February 2015) and theoretical sanction orders were issued (between February 2015 and February 2016). Out of 15 lessees, two lessees of DMO Nawada had not submitted the required documents (mining plan and environmental clearance) till April 2018 to the concerned MO though their mining plan was approved in May 2015 and the EC was issued in June 2017. Thus, against the prescribed time-limit of 120 days (four months) the lessees did not submit the said documents even after a lapse of 27 months. However, the Collector did not cancel theoretical sanctions issued to these mining leases and forfeit the security deposit of ₹ 4.30 crore for their failure to submit the required documents and execute lease agreement.

In response to the audit observation, the Department stated (August 2017) that the environmental clearance certificate is issued by SEIAA (State Environment Impact Assessment Authority), which is an independent agency working under MoEF, Government of India and the Department had no legal right to issue any guidelines for issuance of environmental clearance.

The reply of the Department does not provide the specific reason for non-cancellation of mining leases and non-forfeiture of security deposit despite non-submission of required documents by the lessees within the stipulated time-frame of 120 days.

6.2.12.2 Non-operation of sand *ghat* after cancellation of earlier settlement

Non-operation of sand *ghat* led to loss of ₹ 49.09 crore in 2016.

Notification (22 July 2014) of the Mines and Geology Department stipulates settlement of sand *ghats* for five years (2015-19) through tender-cum-auction basis to highest bidder. It further provides for cancellation of lease and realisation of full settlement amount besides forfeiture of security deposit in case the settlee

¹⁷ Mining plan, environmental clearance, consent to operate and consent to establish.

¹⁸ Theoretical sanction is provisional sanction which is subject to fulfilment of prescribed conditions.

¹⁹ Banka, Gaya, Nawada and Sheikhpura.

of sand *ghat* withdraws from settlement. It also requires the Collector, to give an opportunity to the second highest bidder and if the second highest bidder also fails to comply, his security deposit shall also be forfeited and fresh settlement process is to be initiated. Further, the Department had issued instructions (October 2015) not to return the earnest money to the second highest bidder till formalities for settlement of the sand *ghats* with highest bidder is completed.

Audit observed in two DMOs (Lakhisarai and Jamui) that sand *ghats* were settled (December 2014) as single unit (for the period year 2015-19) for an amount of ₹ 40.91 crore during first year and ₹ 49.09 crore (by enhancing the rate by 20 per cent) in the second year and likewise in subsequent years. The settlee had paid settlement amount and other dues for the year 2015, but did not submit the environment clearance certificate and as a result, deed of settlement of sand *ghats* could not be executed even after lapse of one year. Further, the settlee failed to deposit the royalty for the calendar year 2016 and consequently the Collector cancelled (January 2016) the settlement of sand *ghat* and directed the MOs to recover settlement amount of ₹ 263.53 crore for the entire period. Though MOs issued demand notices, they did not file certificate cases to recover the settlement amount.

In the meantime, the concerned MOs returned the security money of the second highest bidder in January 2015. The District Collector instead of giving opportunity to the second highest bidder sent (January 2016) proposal to the Department for resettlement of sand *ghat* through fresh bid which was accepted by the Department. Accordingly, a fresh bid was made and sand *ghats* were settled. However, mining operations could not be undertaken as the Department did not approve the mining plan till March 2017, though, it had been submitted by the lessee in October 2016. Consequently the lessee did not deposit the settlement amount which resulted in loss of revenue of ₹ 49.09 crore to the Government in 2016²⁰.

The Department accepted (October 2017) the audit observation and stated that demand notice was issued (January 2016) to settlee by the MO concerned. The Department further stated that these sand *ghats* were resettled to other settlees and work order would be issued after submission of environmental clearance. However, the fact remains that the Collector/MO neither recovered settlement amount of ₹ 263.53 crore from the defaulter lessee as no certificate case was filed nor ensured operation of sand *ghats* during 2016 and thus sustained loss of ₹ 49.09 crore.

6.2.13 Non-levy of interest in case of delayed payment of royalty

Five DMOs failed to levy interest of ₹ three crore for delayed payment of instalment amount by settlee of sand *ghats*.

As per the BMMC Rules, simple interest at the rate of 24 per cent per annum is leviable on outstanding royalty.

Audit of five²¹ out of 12 test checked DMOs indicated that five sand *ghats* were settled for the period 2015-19. The settlee had deposited the instalment amount with

²⁰ Loss of revenue after December 2016 has not been estimated.

²¹ Aurangabad, Bhojpur, Gaya, Rohtas and Saran.

delay from one to 152 days. However, the concerned MOs did not levy interest of ₹ three crore for delayed payment of instalment.

The Department accepted the audit observation and stated (August 2017) that instructions have been issued to the concerned MOs for realisation of interest from the settlee of sand *ghat*. Recovery will be watched in Audit.

6.2.14 Operation of Mines and Mineral Development, Restoration and Rehabilitation Fund

6.2.14.1 Non-establishment of Fund²² and non-utilisation of money realised for the fund

Rule 54 of the Bihar Minor Mineral Concession Rules, 1972 (as amended in 2014) is contrary to Constitution of India as it provides for direct credit of amounts collected for Mines and Mineral Development, Restoration and Rehabilitation Fund (MMDRRF) into the Public Account instead of the Consolidated Fund. Failure of the Department to establish MMDRRF and prescribe specific guidelines for utilisation of funds for restoration, reclamation and rehabilitation work in mining areas led to non-utilisation of ₹ 19.50 crore, which was kept in saving/current account instead of Consolidated Fund in violation of Article 266 (1) of the Constitution of India.

Article 266 of Constitution of India provides that all revenues received by the Government of a State shall be credited into the Consolidated Fund of the State.

However, Rule 54 of the BMMC Rules, 1972 (as amended in 2014) provides for establishment of Mines and Mineral Development, Restoration and Rehabilitation Fund (Fund) under Public Account wherein an amount equal to two *per cent* of the settlement amount collected from the mineral concession holder is to be credited. Thus, this rule is contrary to Constitution of India as it provides for direct credit of amounts into the Public Account instead of Consolidated Fund.

Audit of 11²³ out of 12 test checked DMOs indicated that the Department did not establish the Fund and as such, collection of ₹ 19.50 crore at the rate of two *per cent* of settlement amount every year, since 2015 towards separate corpus by the lessees of sand and stone was deposited in the current/saving account of the concerned District Collector instead of Consolidated Fund of the State. This is a further violation of Article 266 (1) of the Constitution of India.

Further, the Department failed to issue separate notification for utilisation of the fund/separate corpus till date of audit. Hence, the amount of ₹ 19.50 crore accumulated towards Fund between January 2015 and March 2017 remained not only unutilised till June 2017 but also outside the Government Account and thus the very purpose for its creation could not be fulfilled.

²² Mines and Mineral Development, Restoration and Rehabilitation Fund.

²³ Aurangabad, Banka, Bhojpur, Gaya, Jamui, Lakhisarai, Nawada, Patna, Rohtas, Saran and Sheikhpura.

In response to the audit observation, the Department replied in exit conference (October 2017), that rules had been amended in new Bihar Minor Mineral Rules, 2017 and accordingly District Minerals Foundation was notified (October 2017), and balances would be transferred to the District Mineral Foundation for its utilisation. The Department's reply does not explain as to why the amounts accumulated up-to March 2017 could not be utilised or why the constitutional provisions were not adhered to.

Recommendation:

The State Government should amend Rule 54 of BMMC Rules, 1972 to ensure that it does not violate Article 266 (1) of the Constitution of India.

6.2.14.2 Non-levy of contribution money towards Fund

Five DMOs did not realise ₹ 70.36 lakh towards separate corpus/Fund from permit holders for extraction of brick earth and ordinary earth.

Audit of the office of Director of Mines and Geology and five²⁴ out of 12 test checked DMOs indicated that during the period 2015-16 and 2016-17 ₹ 27.90 crore and ₹ 7.27 crore was realised as royalty from concession holders for extraction of brick earth and ordinary earth. However, the MOs concerned did not realise two *per cent* of the settlement/auctioned amount towards separate corpus/Fund as they failed to incorporate the condition of levy towards separate corpus/Fund in permit conditions. This resulted into non-realisation of ₹ 70.36 lakh.

In response to the audit observation, the Department stated (October 2017) that rules were amended in October 2017 for formation of District Mineral Foundation and action would be taken accordingly. The reply of the Department does not explain as to why the MOs did not make any deduction from permit holders of brick earth and ordinary earth towards Fund.

Recommendation:

The Department should ensure deduction of prescribed amounts from all mineral concession holders and credit these into Government Account for further transfer to the Fund.

²⁴ Aurangabad, Bhojpur, Patna, Rohtas and Saran.

6.2.15 Miscellaneous points

6.2.15.1 Delay in approval of Mining plan

The Committee headed by the Director delayed approval of the mining plan by 30 to 207 days, as a result of which, the four out of five lessees could not submit the mining plan within the prescribed time-limit of 90 days.

As per notifications (August 2013 and July 2014) of the Department and the BMMC Rules, successful bidders for sand *ghats* and stone quarries are required to submit approved mining plan within 90 days and 120 days respectively, of sanction of lease. As per notification (February 2014) of the Mines and Geology Department, the mining plan shall be approved by the committee headed by Director of the Department within 30 days of its submission.

- Audit of the office of the Director of Mines indicated that the settlees of sand *ghats* submitted 24 mining plans (between December 2014 and October 2015) for the settlement period 2015-19. Out of these, 22 mining plans were approved by the Department (between March 2015 and February 2016), of which, five mining plans of five lessees pertaining to nine²⁵ selected districts were approved with delays ranging between 60 and 237 days. Thus it was evident that the Committee headed by the Director took 30 to 207 more days to approve the mining plan as the committee took inordinate time in scrutiny of mining plan and communicating deficiencies in the mining plan to the lessee. As a result, four out of five lessees could not submit the approved mining plan within the prescribed time-limit of 90 days.
- Audit observed in two cases of DMO Sheikhpura that theoretical sanction in case of two leases of stone quarries was accorded by the Collector in February 2016. However, the lessees could not submit the mining plan within the stipulated time of 120 days as the Department approved (December 2017) the mining plan with delay of 18 month though the lessees had applied in May 2016. The Department was responsible for the delay in approval of the mining plans. This led to non-execution of mining leases and subsequently mining operation could not be commenced resulting in non-realisation of revenue from stone quarry.

In response to the audit observation, the Department stated (August 2017) that the mining plans submitted by the settlee were incomplete and not up to the mark. The reply of the Department is not acceptable as the Department took inordinate time to scrutinise mining plans and communicate deficiencies to the lessee. Moreover, the Department was entirely responsible for delay in approval of mining plans in two cases of DMO Sheikhpura.

²⁵ Aurangabad, Banka, Bhojpur, Gaya, Jamui, Lakhisarai, Nawada, Rohtas and Saran.

6.2.15.2 Non-issuing of transit passes/challans and non-submission of monthly return

The Department did not issue transit passes/challans to permit holders of ordinary earth and ensure submission of monthly returns by them.

The BMMC Rules, 1972 provides that, every lease or permit holder who intends to despatch minerals shall issue challan to the carriers who shall produce the same on demand by any competent officer. The Rules further provides for permit holders to maintain register exhibiting information *viz.* name and address of lessee/permit-holder, details of quarry lease/permit, area, mineral and location of quarry site.

Audit of three²⁶ out of 12 test checked DMOs indicated that 120 permits were issued to concerned persons/permit holders for excavation of 3,000 cubic meters of ordinary earth per permit during the period 2014-15 and 2015-16, but transit passes/challans were not issued by the concerned MOs to the permit holders as the MOs did not make requisitions to the Department to issue these. Audit further observed that the permit holders did not submit the required monthly return for excavation of ordinary earth. In the absence of monthly returns and use of transit pass by permit holders, there was no means to verify that the permit holders excavated only authorised quantity of earth. This is fraught with the risk of illegal mining of ordinary earth and loss of royalty thereon.

The Department accepted the facts in the exit conference (October 2017).

6.2.15.3 Inspections of brick kilns not done by Circle Officers

Circle Officers of the Revenue and Land Reforms Department, who were authorised for verification and inspection of brick kilns, did not inspect the brick kilns or submit inspection reports to the concerned MOs.

The BMMC Rules requires the brick kilns owner to pay the consolidated amount of royalty in two equal instalments along with application fee of ₹ two thousand. Further, due to shortage of man-power the Department transferred (November 2016) the power of MO relating to verification and inspection of brick kilns and collection of royalty from owners of brick kiln to concerned Circle Officers of the Revenue and Land Reforms Department.

Audit observed in 12 test checked DMOs that the concerned Circle Officers did not conduct any inspection of brick kilns and did not submit inspection reports to concerned MOs. Thus, Circle Officers did not detect any brick kiln operating without permit. It was further observed that number of brick kilns operated during

²⁶ Bhojpur, Patna and Saran.

2016-17 decreased to 2,274 from 2,463 in 2015-16 which led to reduction of revenue of ₹ 3.40 crore (from ₹ 15.70 crore to ₹ 12.30 crore) from the brick-kilns. Thus, delegation of powers of Mining Officer to Circle Officer of the Revenue and Land Reforms Department negatively impacted the revenues realised from brick kilns. Moreover, the BMMC Rules do not authorise the Mining Department to delegate its power of collecting royalty from brick kiln owners to officers of any other Department.

In the exit conference (October 2017), the Department accepted the facts of decrease in revenue.

Recommendation:

The Department may ensure adequate inspection/verification of brick-kilns by the Circle Officers or re-consider its decision of transferring such revenue collection work to Circle Officers.

Other observations of compliance audit

6.2.15.4 Penalty for irregular extraction of ordinary earth not levied

Penalty of ₹ 8.05 crore was not levied on works contractors for extraction of ordinary earth without obtaining requisite quarrying permits.

Ordinary earth is a minor mineral on which royalty at the rate of ₹ 22 per cubic metre is leviable. The BMMC Rules requires sanction of the competent authority for any quarrying activity. The BMMC Rules further provides for initiation of criminal proceedings and levy of penalty for illegal mining which includes recovery of the price of the mineral, rent, royalty or taxes as the case may be.

Audit observed from lease files/Bank Draft Register in five DMOs²⁷ that royalty of ₹ 8.05 crore pertaining to 11 works contractors was deposited during the period from March 2015 and July 2016 for mining of ordinary earth but without obtaining the requisite quarrying permit. The royalty was deposited either by the contractors themselves or by the MOs (in cases where the royalty was deducted by the NHAI and forwarded to the mining offices). However, in either case, the challans through which the royalty was deposited were endorsed by the MOs contained the name of contractors. Thus, despite being aware of the contractor's quarrying activities without valid permit, the MOs failed to levy penalty of ₹ 8.05 crore equivalent to the amount of royalty.

In reply to the audit observation, the Department stated (October 2017) that royalty for the ordinary earth (minor mineral) had been paid by the contractors voluntarily and hence penalty was not imposed under the provision of Rule 40

²⁷ Bhabhua, Bhagalpur, Muzaffarpur, Supaul and Vaishali.

(10) of the BMMC Rules. The reply of the Department is not in consonance with the provision of Rule 40 (1) of the Rules *ibid* which stipulates that mining of ordinary earth without obtaining requisite quarrying permit is irregular and hence penalty was leviable under Rule 40 (8) of the Rules *ibid*. Further, the PAC also recommended (December 2016) on a similar para that had featured in Audit Report 2013-14 to file certificate case for realisation of penalty from concerned works contractors.

The Audit Reports for the years 2011-12 to 2015-16 had reported similar observations involving amount of ₹ 16.86 crore. But, the nature of lapses/irregularities are still persisting which indicates that the Department did not take corrective measures to prevent recurring leakage of revenue.

6.2.15.5 Short realisation of stamp duty and registration fees on settlement of sand ghats

Stamp duty and registration fees of ₹ 95.73 lakh was not realised from the settlees of sand ghats.

The Indian Registration Act, 1908 provides for registration of lease documents of immovable property for any term exceeding one year. As per the new Sand Policy, 2013, stamp duty at the rate of three *per cent* and registration fees at the rate of four *per cent* of the auctioned amount was payable on execution of agreement.

Audit observed from the settlement files of sand *ghats* in three DMOs²⁸ that three sand *ghats* were settled for a period of five calendar years (2015-19) for an auctioned amount of ₹ 14.08 crore. As the settlement of sand *ghat* was made for five years for the period 2015-19, lease agreement should have been registered after paying applicable registration fee and stamp duty. However, in one case, lease agreement was executed for one year only instead of, for the whole period of the settlement. In the remaining two cases, lease agreements were not executed. The settlees of sand *ghats* had paid stamp duty of only ₹ 2.85 lakh against the payable stamp duty of ₹ 42.25 lakh. Audit further observed that these settlees had neither paid registration fees of ₹ 56.33 lakh on the settlement amount nor got the agreement registered for the settlement period 2015-19. Thus, failure of the MOs for not getting the agreement with the settlees registered for the whole settlement period resulted in short realisation of revenue of ₹ 95.73 lakh.

In reply to the audit observation, the Department stated (October 2017) that as per new Sand Policy, 2013, sand *ghats* were settled for five calendar years (2015-19) and stamp duty and registration fees were deposited by the settlee on yearly basis. The reply of the Department is not in consonance with the facts that the settlement of sand *ghats* was for five years and accordingly stamp duty and registration fees was leviable on whole settlement amount for the period 2015-19.

²⁸ Gopalganj, Supaul and Vaishali.

The Audit Reports for the years 2012-13 to 2015-16 had reported similar observations involving amount of ₹ 66.02 crore. But, the nature of lapses/irregularities are still persisting which indicates that the Department did not take corrective measures to prevent recurring leakage of revenue.



Patna
The 24 August 2018

(NILOTPAL GOSWAMI)
Principal Accountant General (Audit)
Bihar

Countersigned



New Delhi
The 28 August 2018

(RAJIV MEHRISHI)
Comptroller and Auditor General of India

