

**CHAPTER 6**  
**MINING RECEIPTS**



## CHAPTER 6: MINING RECEIPTS

### 6.1 Tax administration

Mines and Minerals (Development and Regulation) Act (MMDR Act), 1957, Bihar Minor Mineral Concession Rules (BMCM Rules), 1972 and Mineral Concession Rules (MC Rules), 1960, as amended from time to time, govern mining of mineral in Bihar.

The regulation and development of mines and minerals are administered by the Mines and Geology Department with the Principal Secretary-cum-Mines Commissioner 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 (DMOs) are headed by Assistant Director of Mines/Mining Development Officers whereas Mining Inspectors (MIs) are in-charge of the remaining 24 district mining offices and are responsible for assessment, levy and collection of royalty and other mining dues. District Collector is the head of the mining administration in the district.

### 6.2 Results of audit

Audit test checked records of 16<sup>1</sup> out of 48 units of the Department during 2017-18. In addition, settlement of stone quarries and Sand *Ghats* were reviewed during April-October 2018 in 14<sup>2</sup> units. There were 53 mining leases in the State, out of which audit examined 43 out of 48 leases in the 30 test checked districts. Audit noticed irregularities worth ₹ 1,097.27 crore in 147 cases consisting 24 leases due to various deficiencies as detailed in **Table-6.1**:

Sl. No.	Categories	No. of cases	Amount
1.	Non/Short realisation of royalty and cesses	17	6.42
2.	Non-levy of penalty for irregular removal of brick earth/sand	17	8.75
3.	Non-levy of penalty against works contractors	13	56.65
4.	Non-realisation of revenue due to non-execution of settled lease of stone quarry	1	25.68
5.	Non-realisation of Government revenue due to non-settlement of stone quarries	2	684.50
6.	Loss of revenue due to non-adherence of condition of settlement of sand <i>ghat</i> as per New Sand policy	8	214.89
7.	Loss of revenue due to non- resettlement/ non- operation of sand <i>ghat</i> after cancellation	6	96.46
8.	Others	83	3.92
<b>Total</b>		<b>147</b>	<b>1,097.27</b>

<sup>1</sup> **DMOs** – Arwal, Bettiah, Bhagalpur, Biharsharif, Buxur, Darbhanga, Gaya, Jehanabad, Kishanganj, Madhepura, Motihari, Munger, Muzaffarpur, Nawada; **Assistant Director of Mines**, Bhagalpur; **Deputy Director of Mines**, Tirhut.

<sup>2</sup> **DMOs** – Ara, Aurangabad, Gaya, Gopalganj, Jamui, Lakhisarai, Patna, Purnea, Saharsa, Saran, Sasaram, Siwan, Supaul and Vaishali.

The audited units of the Department accepted short levy, short realisation and other deficiencies of ₹ 1,194.41 crore in 582 cases during April 2017 and July 2019. Out of these 582 cases, 26 cases involving ₹ 322.50 crore were pointed out during 2017-18 and the rest during earlier years. The replies in the remaining cases of 2017-18 and those of earlier years are awaited (July 2019). However, reply of the Department at Government level has not been received as on September 2019.

Audit findings worth ₹ 1,008.84 crore have been illustrated in this chapter. The errors/omissions pointed out are on the basis of a test audit. The Department/Government may, therefore, undertake a thorough review of all units to check whether similar errors/omissions have taken place elsewhere and, if so, to rectify them; and to put a system in place that would prevent such errors/omissions.

### **6.3 Non-realisation of Government revenue due to non-settlement of stone quarries**

**Lackadaisical approach of State officials in settlement of stone quarries resulted in non/delayed settlement of ten blocks of stone quarries of Gaya, three blocks of stone quarries of Rohtas and one block of stone quarry of Aurangabad and therefore, the State Government was deprived of revenue of ₹ 710.18 crore.**

Rule 9A read with Rule 52 of the BMMC Rules, 1972 (Amended in 2014) read with instruction (August 2014) of the Department of Mines and Geology, Government of Bihar provide that the settlement of formal lease of stone quarry shall be done for five years through public auction and the area of quarrying lease shall not be less than five hectares.

It further provides that the formal lease of stone mining is to be executed by the Collector after submission of required documents<sup>3</sup> and deposit of due instalment of settlement amount by the settlee within 120 days from the in-principle sanction<sup>4</sup>.

In case of failure to adhere the lease conditions, lease is deemed to have been revoked and application and security deposit is required to be forfeited *suo motu*.

As per notification (February 2014) of the Mines and Geology Department, the mining plan shall be approved by the Committee headed by Director, Mines within 30 days of its submission.

#### **(a) Settlement of Stone quarries in Rohtas**

The chronology of events in the settlement of stone quarries in DMO, Rohtas is detailed in the following **Table 6.2**:

---

<sup>3</sup> Mining plan, environmental clearance, consent to operate and consent to establish.

<sup>4</sup> In-principle sanction is provisional sanction which is subject to fulfilment of prescribed conditions.

Table - 6.2

Date	Event
August 2014	The Department issued instruction for formation of stone blocks and their settlement. Accordingly, the MO, Rohtas formed 10 compact and contiguous blocks of stone quarries in five <i>maujas</i> (revenue villages) and initiated bidding process for settlement of the stone quarries for five years.
November 2014	The MO, Rohtas sought forest clearance from the DFO, Rohtas.
December 2014	DFO, Rohtas denied forest clearance stating that the stone blocks were situated near Wild life Sanctuary. In view of this, the MO, Rohtas sought guidance from the Department.
February 2015	The Department clarified that objection of the DFO, Rohtas is beyond their jurisdiction as Forest Department can object only in cases located in Forest Land or buffer zone. The Department further directed Collector, Rohtas to initiate action for settlement of stone quarries as per rules.
May 2015	The MO, Rohtas initiated Bidding process for settlement of stone blocks. However, DFO stated that these stone blocks being situated within 10 KMs of Wildlife Sanctuary are within eco-sensitive zone and therefore mining activities in these areas would be violation of the Hon'ble Supreme Court order. Thereafter, the MO, Rohtas cancelled the bidding process.
January 2016	After said areas of these mining blocks were already de-notified by the MoEF, GoI from eco-sensitive zone, the MO, Rohtas approached DFO, Rohtas for forest clearance.
September 2016	The Collector, Rohtas directed a joint inspection of these areas after nine months of de-notification.
October 2016	The joint inspection team (mining, forest and police personnel) recommended three out of the proposed 10 blocks for settlement of stone quarries at a reserve price of ₹ 196.27 crore.
November 2016	The Collector sent the proposal for settlement of quarries to the Department on which, no action was taken till February 2017.
February 2017	Meeting between the higher officials of the Mining and Forest Department took place. Forest Department accorded a conditional approval (May 2017), of constructing 100 meter fence to avoid encroachment and mining of forest land, for three blocks. Thus, there was delay of 17 months in issuing forest clearance by the Forest Department. Moreover, the demarcation and fencing work remained inconclusive till November 2018.
September 2017	The Department (Special Secretary) directed the MO, Rohtas to settle the stone quarries after seven months of meeting with forest officials.
October 2017	The Department replaced BMMC Rules, 1972 with Bihar Minor Mineral Rules 2017 in October 2017 by inserting several provisions which were contrary to MMDR Act, 1957.
October 2017	In view of the above new rules, the MO, Rohtas requested the Principal Secretary to issue guidance for settlement of quarries.
November 2017	Patna High Court stayed the new rules as it was at variance with the MMDR Act. The Court further directed to settle quarries based on the existing rules before 2017 enactments.
July 2018	The Principal Secretary/Director did not issue any guidance to MO, Rohtas till July 2018 but issued a reminder to settle the quarries after lapse of nine months.
August-December 2019	The MO, Rohtas and DFO, Rohtas took five months in identification of the area for raising of 100 meter fence, which was a condition for NOC.
January 2019	The Department initiated e-auction for settlement of these quarries
February 2019	The Department postponed the settlement process citing indispensable reason and the stone quarries remain unsettled as on May 2019 though the settlement process was initiated in August 2014.

Audit further observed that between January 2017 and October 2018, task force under the Collector, Rohtas seized stone worth ₹ 4.34 crore in Rohtas district which indicates that non-settlement of mines resulted in illegal mining as well.

Thus, due to inordinate delay of five long years in settlement of stone quarries by the Department, revenue worth ₹ 196.27 crore could not be realised as approved by the Department in February 2015.

The above indicates significant delays and substantive failure of the Department at every level (Mines Commissioner to MO) in terms of coordination, monitoring, supervision and lack of adequate efforts against illegal mining. Further, the new BMM Rules 2017 which was at variance with the MMDR Act, 1957 led to Court cases and contributed further confusion and delay in settlement of the quarries.

In reply, the MO, Rohtas stated (October 2018) that the process of settlement was under process. The matter was reported to Department in December 2018; their reply was awaited (September 2019).

**(b) Settlement of Stone quarries in Gaya**

The chronology of events in the settlement of stone quarries in DMO, Gaya is detailed in the following **Table 6.3**:

**Table 6.3**

Date	Event
August 2014	The Department (OSD/Additional Secretary) issued instruction for survey and formation of stone blocks for their settlement for five years.
June 2015-September 2015	Forest Division, Gaya issued (in June 2015 for Bandhua and in September 2015 for Bodhchak) No objection certificate (NOC) for settlement of these stone blocks.
December 2015-January 2016	The Collector got the spot verification done by a Committee comprising of Assistant Director, sub-divisional Magistrate and Additional Collector after lapse of 16 months. The Committee recommended for settlement of 10 stone blocks only (eight in Bandhua and two in Bodhchak <i>mauja</i> ) out of 12 blocks of stone quarries having minimum reserve value of ₹ 488.23 crore.
February 2016 -August 2016	Despite recommendation of the Committee and issuance of NOC by the Forest Department, the Collector and Assistant Director Mines instead of proceeding for settlement sought direction from the mining Department in February 2016 and August 2016 respectively.
February 2017	The Mining Department, after lapse of 12 months, called for the details of those stone blocks from the Collector in February 2017, which was made available to the Department in May 2017.
July 2017	<ul style="list-style-type: none"> <li>The Collector (October 2016) and the Mining Department (Director/Special Secretary Mines) (July 2017 and May 2018) sought <b>No Objection Certificate</b> from Art, Culture and Youth Department for the two maujas of Bodhchak, even though it was not in the list of protected monument area, which was accorded in December 2018 after a lapse of 26 months.</li> <li>As regards the eight maujas of Bandhua, the Mining Department through their letters in July 2017 and reminders in May and August 2018 sought NOC from Tourism Department which was not accorded till July 2019 even after lapse of 24 Months.</li> </ul>
December 2018-February 2019	The Mining Department fixed (December 2018) the reserve price of two blocks of Bodhchak at ₹ 105.00 crore based on the information of the Collector, Gaya. In January 2019, the Collector initiated e-auction, which was cancelled in February 2019 citing indispensable reasons and the reserve money was refunded to the bidder.

Non/delayed settlement of these Stone quarries was fraught with risk of illegal mining activity also which was evident from seizure of huge quantity of stone in 3,247 raids involving realisation of penalty of ₹ 4.12 crore in Gaya district during 2017-19.

Thus, Audit observed that the Mining Department (MC to MO) failed to take effective measures for settlement of these 10 stone quarries even after a lapse of five years and could not realise ₹ 488.23 crore.

In reply, the ADM Gaya stated (October 2018) that the stone quarry would be settled after obtaining the direction from the Department. The Department at Government level has not given any reply. This suggested lack of clarity and transparency in the system of settlement of stone quarries.

### (c) Settlement of Stone quarries in Aurangabad

The chronology of events in the settlement of stone quarries in DMO, Aurangabad is detailed in the following **Table 6.4**:

**Table 6.4**

Date	Event
<b>August 2015</b>	One block of stone quarry under <i>mauja</i> Pachar, was auctioned for five years to the highest bidder for the bid amount of ₹ 32.10 crore and in-principle sanction order was issued.
<b>August 2015</b>	The Principal Secretary received a complaint from an individual that the area comes under a religious site.
<b>August 2015-May 2017</b>	A list of places indicating protected monument area and places of tourist interest issued by the Mining Department (December 2014) itself, did not include the proposed stone quarry area. In spite of this, the Department took 22 months to dispose the complaint and give go ahead for operation of stone quarries.
<b>September 2017</b>	The settlee deposited the prescribed security deposit after auctioning of stone quarry and submitted mining plan for approval (December 2015). However, in view of the above complaint, the Department approved the mining plan in September 2017 after delay of 21 months against stipulated time of 30 days.
<b>May 2018</b>	The settlee applied for environmental clearance to Ministry of Environment and Forest due to non-constitution of SEIAA. However, after formation of SEIAA, his application was transferred in May 2018 to the SEIAA.
<b>October 2018</b>	SEIAA granted environmental clearance.
<b>December 2018 - February 2019</b>	The lessee deposited the first instalment of ₹ 6.42 crore in December 2018 and February 2019.
<b>April 2019</b>	Mining lease executed in April 2019 but was not put to operation till September 2019.

Thus, due to significant delays and failures of various departmental authorities including the Principal Secretary-cum-Mines Commissioner, the stone block could not be made operational for five years leading to non-realisation of revenue of ₹ 25.68 crore during the years 2015-19 calculated on the basis of annual instalment.

The matter was reported to the Department in December 2018; their reply was still awaited (September 2019).

### **Recommendation:**

**The Government should investigate from a vigilance angle to ascertain reasons for failure in settlement of stone quarries at every level in last five years and fix responsibility. Further, the Government should specifically investigate at what level the defective BMM Rules 2017 was cleared in the Mining Department in 2017, which was at variance with the MMDR Act, 1957 leading to court cases, confusion and delay and fix responsibility against the responsible officials.**

### **6.4 Loss of revenue due to non/delayed settlement of sand ghats**

**Delayed approval of Mining Plan and EC and lackadaisical approach of the Collectors/MOs in resorting to alternative mechanism to safeguard the revenue, and taking decisions to issue work order as well as weak monitoring and supervision by the Mines Commissioner and the Director led to non-settlement/operation of sand ghats during 2016-2018 and consequently total revenue loss of ₹ 166.89 crore.**

The Mines and Geology Department, Government of Bihar issued a notification on 22 July 2014 for settlement of sand ghats for a period of five years (2015-19) through tender-cum-auction basis to eligible highest bidders. In case the settlee withdraws during the settlement period, the notification provided for cancellation of lease and realisation of full settlement amount, besides forfeiture of security deposit.

In case the first settlee withdraws from the settlement the Collector is required to give an opportunity to the second highest bidder for settlement on the same terms and conditions which was applicable for the first bidder. In case the second bidder fails to submit required documents and due amount, his security deposit is required to be forfeited and fresh auction for settlement of sand ghats was required to be initiated.

Audit examined the settlement of sand ghats in 14 districts and the following irregularities were noticed in five districts:

- **Jamui and Lakhisarai**

Audit scrutiny of the composite sand ghats settlement for 2016-19 for Jamui and Lakhisarai districts revealed that the Department accorded in-principle sanction (July 2016) to undertake mining operation in favour of a single settlee for a settlement amount of ₹ 263.03 crore. The settlee applied for approval (Director, Mines) of the mining plan in October 2016 within the stipulated period of 90 days. Against the stipulated time of 30 days for approval, the Departmental Committee headed by the Director, Mines approved the proposed mining plan of the settlee in June 2017 after an inordinate delay of nine months.

The analysis of the above delay on the part of the Director, Mines revealed that though the settlee applied for approval on 7 October 2016, the Director mines after delay of 51 days requested the Collectors of Jamui and Lakhisarai to conduct physical verification of the details of mining plan. The Collectors submitted their verification reports on 12 January 2017 and 14 January 2017 respectively. However,



the Director, Mines after an inordinate delay of 165 days approved (29 June 2017) the mining plan, without assigning any reasons for delay in the records.

As per notification (2014) of the Department, after approval of mining plan and environmental clearance from the State Environment Impact Assessment Authority (SEIAA), work order for sand mining was to be issued to the settlee. However, though mining plan was pending for approval and work order for mining was not issued, yet the Collectors/MOs of the districts *ibid* issued demand notices (November and December 2016) against the settlee for deposit of ₹ 24.50 crore (50 *per cent* of the settled amount for 2016). Meanwhile, due to abnormal delay in approval of mining plan at the level of Director, Mines the settlee could not obtain environmental clearance from SEIAA, as the authority itself was dissolved on 2 July 2017 and the SEIAA was reconstituted in April 2018. Therefore, though the settlee applied for environmental clearance immediately after approval of mining plan, he could not obtain environmental clearance in time.

Meanwhile, the Principal Secretary-cum-Mines Commissioner of the Department overlooking the above facts available in the departmental records, issued directions (August 2017) to the Collectors of the districts *ibid* to cancel the settlements of the settlee in cases of non-submission of environmental clearance within the stipulated time. Consequently, the Collectors of these two districts issued show cause notices in September 2017 to the settlee. The settlee replied (September-October 2017) that due to delay in approval of mining plan for about nine months he could not obtain environmental clearance as the SEIAA itself was dissolved in July 2017. Despite the above, the Collectors arbitrarily cancelled (October-November 2017) the settlement against the settlee on the ground of non-submission of environmental clearance, non-deposit of first installment and taxes etc.

The Collectors after cancelling the settlement, sought guidance (November-December 2017) from the Principal Secretary-cum-Mines Commissioner whether settlements should be made against the second highest bidders. However, no guidance was provided to the Collectors.

Further, the Principal Secretary-cum-Mines Commissioner issued the new BMM Rules w.e.f. 10 October 2017 wherein several provisions such as reverse auction, tenure of penalty etc. were introduced in contravention with the original MMDR Act, 1957 as well as contrary to the provisions of Criminal Procedure Code (Cr. PC), Indian Penal Code (IPC) and other statutory provisions. The Deputy Secretary also issued directives in November 2017 to settle sand mines under the new BMM Rules, 2017.

However, based on the petition of the settlee(s), the High Court of Patna, (27 November 2017) stayed the operation of new BMM Rules 2017 in its totality on the ground that new BMM Rules were contrary to provisions of various Acts. Undaunted by the High Court order, the Mines Commissioner issued directions (November 2017) to the Collectors and MOs to commence business of minor minerals (sand) through the Mining Corporation which was incorporated in September 2017, contrary to the High Court orders *ibid*.

Subsequently, the High Court of Patna, taking a deem view of the orders issued by the Principal Secretary-cum- Mines Commissioner on 28 November 2017, and by the Deputy Secretary in November 2017 quashed (8 March 2018) the orders in favour of the original settlee.

Subsequently, the succeeding Principal Secretary -cum-Mines Commissioner quashed (September 2018) the earlier orders of cancellation passed by the Collectors (November- December 2017) and restored the right of the original settlee for sand mining. However, as on May 2019, the settlee could not get work order for sand mining nor the Department could earn ₹ 164.39 crore (January 2017 to May 2019) royalty in lieu of sand mining.

Thus, due to delay in approval of mining plan by Director, Mines, cancellation of the settlement in cases of lack of environmental clearance, which was beyond the control of the settlee to obtain as explained above, and enactment of BMM Rules by including provisions contrary to the original MMDR Act, 1957 and consequent High Court cases and violation of High Court orders by the Department leading to administrative chaos, confusion and abnormal delay and failure to provide alternative mechanism for settlement of sand *ghats* led to non-realisation of revenue to the tune of ₹ 164.39 crore.

**Recommendation:**

**The Government should carry out vigilance enquiry to unearth the reasons for the above mismanagement and fix responsibility against the responsible officials at every level (Mines Commissioner to MO) who instead of securing revenue interest, acted against the revenue interest of the state, by violating all established rules and procedures in vogue leading to various court cases, chaos, confusion and delay, etc.**

• **Saharsa**

In Saharsa, the in-principle settlement of sand *ghats* was accorded in June 2016 for 2016-19 at an amount of ₹ 2.51 crore. Subsequently the settlee deposited proportional amount of 1<sup>st</sup> instalment of ₹ 18.37 lakh in July 2016 and applied for approval of mining plan in July 2016 which was approved by the Departmental committee headed by the Director in December 2016 i.e. after elapse of five months against the stipulated one month.

Thereafter the settlee applied for EC in January 2017 which was issued by SEIAA in March 2017 and submitted it immediately to the MO and by that time 2016 elapsed. Therefore the settlee submitted for adjustment of money deposited for 2016 with payable amount of 2017. The MO instead of issuing order after adjustment referred (March 2017) this case to the Department for guidance.

In the meantime the settlee approached the High court who in its interim order (May 2017) directed the Collector to issue the work order, if there is no legal impediment. However, no work order was issued by the Collector/MO, who again referred (May 2017) this case to the Department for guidance. The High court in its final judgement directed (10 November 2017) the Department to issue the work

order to the settlee after adjustment of amount deposited for 2016 as the settlee could not operate in 2016 for want of work order, who in turn instructed the DMO to do so. Subsequently the MO issued the work order on 8<sup>th</sup> December 2017 for 22 days of 2017 after adjustment of money deposited for 2016.

Thus due to delay of five Months in approval of Mining Plan and delay in EC (two months) and lackadaisical approach of the Collector/MO in taking decisions to issue work order, weak monitoring and supervision by the Mines Commissioner and the Director led to non-settlement/operation of sand *ghats* during 2016 and 2017 (except for 22 days) leading to loss of revenue of ₹ 99.58 lakh (₹ 46.80 lakh for 2016 and ₹ 52.78 lakh for 2017).

- **Gopalganj and Siwan**

In two districts (Gopalganj and Siwan) in-principle settlement of sand *ghats* was accorded for 2015-19 in December 2014 for ₹ 1.09 crore and ₹ 1.64 crore in favour of two settlees.

However, the settlees did not even submit the mining plan and EC to the Department within stipulated time of 120 days and operated throughout 2015. Moreover, the settlees deposited ₹ five lakh each only for the year 2016 and did not deposit settlement amount of ₹ 12.76 lakh and ₹ 21.40 lakh in Gopalganj and Siwan respectively. Consequently, the mining leases of Gopalganj and Siwan were cancelled in November 2017 subsequent to a direction of the Principal Secretary in August 2017.

The Collectors/MOs failed to provide alternative mechanism to re-settle these lease with the second bidders for the remaining period of leases to safeguard the revenue. The Department though issued directions in February 2017 for settlement but failed to ensure settlement indicating lack of effective monitoring and control. As a result, the sand *ghats* of these two districts were not made operational during 2017 and 2018 resulting in loss of revenue of ₹ 1.50 crore, which includes un-paid amount of 2016 also.

Moreover, possibility of illegal mining during the period sand *ghats* remained non-operational cannot be ruled out as audit observed that 3,250 raids were conducted in which 387 cases of illegal mining involving ₹ 4.39 crore was reported during April 2017 and October 2018. These reports of task force was going to the Department despite that the leases were not settled and made operational.

Delay approval of Mining Plan and EC and lackadaisical approach of the Collectors/MOs in resorting to alternative mechanism to safeguard the revenue, and taking decisions to issue work order as well as weak monitoring and supervision by the Mines Commissioner and the Director coupled with lack of MIS led to non-settlement/operation of sand *ghats* during 2016-2018 and consequently total revenue loss of ₹ 166.89 crore.

The matter was reported to the Department in December 2018; their reply was still awaited (September 2019).

## 6.5 Loss of revenue due to cancellation of leases of sand *ghats*

**Absence of provisions to operationalise sand *ghats* during the interim period between cancellation of leases and their subsequent restoration, resulted in loss of revenue of ₹ 96.39 crore in four district mining offices.**

The MOs of four districts (Patna, Bhojpur, Rohtas and Vaishali) issued licences for sand *ghats* to three settlees for ₹ 1,329.53 crore for the period 2015-19.

In August 2017, the Principal Secretary-cum-Mines Commissioner/Additional Secretary-cum-Director of Mines issued directions to the District Collectors to cancel the settlements of the sand *ghats* in case of violation of conditions of the mining plans and environmental clearance by the settlees. Accordingly, the Collectors of these districts issued notices to the three settlees and cancelled (September–October 2017) the settlement of sand *ghats*, which were in operation since January 2015, due to violation of the conditions stipulated in the notice inviting tender, approved mining plan and environmental clearance. The settlees did not pay the third instalment of royalty of ₹ 64.58 crore which was due on 15 September 2017 and ₹ 26.55 crore of the first instalment of 2018 which was due on 15 December 2017. Subsequently, these three settlees approached (12 January - 27 January 2018) the Principal Secretary-cum-Mines Commissioner for restoring the leases against the cancellation orders of the Collectors. The Principal Secretary-cum-Mines Commissioner revoked (25 January/19 February 2018) the cancellation orders. Incidentally, the same Principal Secretary-cum-Mines Commissioner who had issued directives to the Collectors of Bhojpur, Rohtas and Vaishali to cancel the settlement of the sand *ghats* revoked their orders in addition to revoking the order of Collector of Patna district.

The revocation orders included a condition that the settlees should pay royalty due for the period (September/October 2017 to January/February 2018) when the sand *ghats* were not in operation owing to cancellation of leases, which was contrary to the provisions of the MMDR Act and BMMC Rules, 1972 as no extraction and removal of mineral had taken place. The settlees moved the Hon'ble Patna High Court against the order of the Mines Commissioner and against the demand notices issued to them by the respective Collectors for the period of cancellation.

The Hon'ble High Court in its interim order (March and May 2018) stayed the demand of unpaid royalty issued to the lessees for the period their licenses were cancelled citing the provision of Section 9 of the MMDR Act and rule 26(4) of the BMMC Rules, 1972 that royalty is payable on the extraction and removal of mineral and the settlees did not extract or remove mineral during the period of cancellation.

Audit observed that during the interim period between cancellation of leases of the sand *ghats* and their subsequent restoration, the sand *ghats* remained inoperative. Due to absence of a clear provision in the BMMC Rules (as amended) on the *modus operandi* to operationalise sand *ghats* in such situations, there was a loss of revenue of ₹ 96.39 crore for the period when the sand *ghats* were not in operation.

The matter was reported to the Department in December 2018, but no response was received (September 2019). However Audit observed that the Government of Bihar notified (September 2019) the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 wherein the issue of cancellation of leases of sand *ghats* was addressed vide Rule 30 of Rules *ibid* which provides that wherever a settlee is found indulging in breach of terms of lease for the third time or more, the settlement of that particular sand *ghat* may be suspended by the Collector temporarily for a maximum period of one month until such breaches are rectified. If the breaches are not rectified in the time given by the Collector, action for cancellation of the settlement shall be taken in extreme conditions. Further, Rule 48 of the Rules *ibid* provides that if any mineral concession holder contravenes any provision of the Act or any rules made thereunder, the Collector may at any time, with or without cancellation of such mining lease take over the management of such mining operations/establishment at the risk and loss of the owner of that establishment; or transfer the establishment, for the unexpired period of mining lease at the risk and loss of the owner, to any other person or the Corporation.

### **6.6 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 ₹ 14.62 crore on works contractors for procurement of minerals from unauthorised sources.**

The Audit Reports for the years 2012-13 to 2016-17 had reported cases of non-realisation of penalty by the works divisions amounting to ₹ 170.57 crore in 81 cases where royalty was deducted from bills of works contractors without ensuring form M and N which contains particulars of minerals. However, this irregularity persists indicating that adequate measures were not taken in this regard by the Department.

The Bihar Minor Mineral Concession (BMMC) Rules, 1972 read with the Mines and Minerals (Development and Regulation) Act, 1957 and direction (January 2016) of the Department require works contractors to procure minerals from authorised lessee/dealer/permit holders and in case of violation, a minimum penalty equivalent to price of the mineral is leviable. The BMMC Rules provides for submission of Form M (which contains names and addresses of the sellers from whom the minerals were purchased) and N (which contains particulars of minerals) at the time of submission of bill by the works contractors as a token of proof that mineral used were procured from authorised sources.

Audit observed (between May and August 2017) in six test-checked District Mining offices<sup>5</sup> that during the year 2015-16 and 2016-17 royalty amounting to ₹ 14.62 crore was deducted by 11 works divisions from bills of works contractors who had not submitted required forms 'M' and 'N' and got them deposited into government account through concerned MOs. However, these works divisions

<sup>5</sup> Bettiah (West Champaran), Darbhanga, Jehanabad, Motihari (East Champaran), Muzaffarpur and Nalanda.

neither stopped payment of bills of works contractors for non-submission of forms M and N nor ensured deduction of penalty also along-with royalty while making payment to works contractor in violation of the aforesaid instructions. Though the MOs had information about works divisions who deducted royalty without levying penalty for procurement of minerals from unauthorised sources, they did not ensure compliance of aforesaid instructions by the works divisions. Thus, non-realisation of penalty by these MOs resulted in non-levy of penalty of ₹ 14.62 crore.

In response to the audit observation, four MOs<sup>6</sup> issued (between January and June 2019) notices of demand to concerned works division and two MOs (Motihari and Muzaffarpur) stated that notice of demand would be issued.

The matter was reported (December 2018) to the Department; their reply was still awaited (September 2019).

### **6.7 Non/short realisation of royalty and penalty from brick kiln owners**

**During brick seasons 2015-16 and 2016-17, 273 brick kilns were operated without valid permit and 121 brick kilns were operated without payment of the consolidated amount of royalty resulting in non-realisation of ₹ 2.96 crore including leviable royalty and penalty.**

As per Rule 26 (A) of the Bihar Minor Mineral Concession (BMMC) Rules, 1972 read with notification (January 2012) of the Mining Department every brick kiln owner has to obtain a permit and is required to pay the consolidated amount of royalty at the prescribed rates<sup>7</sup> in two equal instalments.

Further, Section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957 read with Rule 40 (8) of the Rules *ibid* 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 of the price thereof and may also recover from such person rent, royalty or taxes as the case may be. The above interpretation was upheld (August 2015) by Advocate General on reference made by the Public Account Committee, Bihar.

Audit observed (between July 2017 and January 2018) during scrutiny of brick kiln files and demand, collection and balance register in District Mining Office, Buxar that 276 brick kilns were operated during brick seasons 2015-16 and 2016-17. Out of this, 121 brick kilns were operated without payment of the consolidated amount of royalty. This resulted in non-realisation of royalty of ₹ 91.89 lakh from these brick kiln owners. Audit further observed that permits were issued to only three brick kilns and remaining brick kilns were operated without valid permit. The Mining Officer, who was the permit issuing authority as well, had knowledge of operation of brick kiln without valid permit as evident from the inspection reports. The MO neither stopped business nor levy penalty of ₹ 2.04 crore for illegal mining

---

<sup>6</sup> Bettiah (West Champaran), Darbhanga, Jahanabad and Nalanda

<sup>7</sup> ₹ 1,30,500 for category-I, ₹ 1,01,500 for category-II and ₹ 72,500 for category-III

in accordance with provision of Rule 40 (8) of the Rules *ibid*. Thus, the MO not only failed to realise royalty from owners of 121 operating brick kilns but also failed to levy penalty on 273 owners of brick kilns operated without valid permit and consequently revenue of ₹ 2.96 crore<sup>8</sup> could not be realised. Further audit observed that permits were not issued to these brick kiln owners as they failed to obtain consent to operate and consent to establish certificate from SEIAA and as such operation of brick kiln was fraught with the risk of environmental hazards as well.

In response to the audit observation, the MO realised ₹ 25.62 lakh of consolidated royalty in 34 cases of brick kiln and replied (April 2019) that certificate case would be instituted against the remaining defaulting brick kiln owners.

The matter was reported to the Department in December 2018; their reply was still awaited (September 2019).

## 6.8 District mineral foundation and National Mineral Exploration Trust

### 6.8.1 Non-remittance of money realised for the district mineral foundation into the Consolidated Fund of the State

**An amount of ₹ 19.52 crore realised towards DMF during April 2017 to December 2018 from the lessees of minor and major minerals was deposited into the current/saving accounts of the District Collectors concerned instead of the Consolidated Fund of the State, and were not utilised.**

Government of Bihar notified Bihar District Mineral Foundations Rules, 2018 (May 2018) which provided that every lessee of major mineral shall pay to the District Mineral Foundation (DMF) an amount at the rate of 10 to 30 *per cent* of the royalty paid. Further, every lessee of minor mineral shall pay to the DMF an amount equal to two *per cent* of annual auction/settlement amount/ compounded royalty as the case may be. Rule 8 of the Rules *ibid* also provided that the amount so collected for DMF shall be kept in any scheduled Bank. DMF funds were created for drinking water supply, environmental preservation and pollution control, health care, education, skill development, etc., to minimise/mitigate the adverse impacts, during and after mining, on the environment, health and socio-economics of the people in mining districts.

Article 266 (1) of the Constitution of India provides that all revenue received by the Government of a State shall be credited into the consolidated fund of the State. However, Rule 8 of the Rules *ibid* is contrary to the Article 266(1) of the Constitution of India. Not depositing collection towards DMF into the Consolidated Fund of the State deprived the State Legislature to exercise its legislative oversight authority and is also fraught with risk of fraud and misappropriation.

8

(₹ in lakh)

Year	Royalty			Penalty			Total of outstanding royalty and penalty
	Leviable	Levied	Short	Leviable	Levied	short	
2015-16	110.76	65.35	45.41	107.88	0	107.88	153.29
2016-17	100.95	54.47	46.48	95.85	0	95.85	142.33
	<b>Total</b>						<b>295.62</b>

Audit scrutiny of records of 12<sup>9</sup> DMOs revealed that ₹ 19.52 crore was realised towards DMF during April 2017 to December 2018 at the prescribed rate from lessees of minor and major minerals and was deposited into the current/saving bank accounts of the District Collectors concerned instead of the Consolidated Fund of the State and were not utilised.

The matter was reported to the Department in December 2018; their reply was still awaited (September 2019).

**Recommendation:**

**The Department should amend Bihar District Mineral Foundations Rules, 2018 to ensure that it does not violate Article 266 (1) of the Constitution of India. Further, the Department should remit the funds collected towards DMF into the Consolidated Fund of the State.**

**6.8.2 Non-levy of contribution money towards district mineral foundation**

**Twelve MOs did not realise ₹ 23.84 lakh towards district mineral foundation (DMF) from concession holders of brick earth as they failed to incorporate the condition of levy towards DMF in permit conditions.**

Audit scrutiny of records of above 12 test checked DMOs revealed that an amount of ₹ 11.92 crore was realised as royalty from concession holders for extraction of brick earth during 2017-18. However, the MOs concerned did not realise two *per cent* of the settlement/auctioned amount towards district mineral foundation (DMF) as they failed to incorporate the condition of levy towards DMF in permit conditions. This resulted in non-realisation of ₹ 23.84 lakh.

The matter was reported to the Department in December 2018; their reply was still awaited (September 2019).

**6.8.3 National Mineral Exploration Trust Fund**

**An amount of ₹ 8.24 lakh received from lease holders of major mineral during the period January 2015 to December 2018 towards NMET fund was not transferred to the Consolidated fund of India.**

Government of India established (August 2015) National Mineral Exploration Trust Fund (NMET) in pursuance of Section 9C of Mines and Minerals (Development and Regulation) Amendment Act, 2015 and provided that the holder of mining lease or prospecting licence-cum-mining lease of major minerals shall pay to the trust a sum equivalent to two *per cent* of the royalty. The amount so collected towards the Fund initially was to be kept in public account (April 2018) under head of account 8449- Other deposits; 123- National Mineral Exploration Trust Deposit and finally it was to be transferred to the Consolidated fund of India under the Major Head-0853, Minor Head 123- National Mineral Exploration Trust through book transfer.

---

<sup>9</sup> Aurangabad, Banka, Bhojpur, Gaya, Jamui, Lakhisarai, Nawada, Patna, Purnea, Rohtas, Saran and Sheikhpura.



Audit scrutiny of records in two district mining offices (Nawada and Rohtas) revealed (January 2019) that an amount of ₹ 8.24 lakh was received from lease holders of major mineral during the period January 2015 to December 2018 towards NMET. However, the amount of ₹ 8.06 lakh so collected was not remitted into public account of the State Government and therefore it could not be transferred to the Consolidated fund of India and kept in the form of Bank demand draft in the name of NMET. Balance amount of ₹ 0.18 lakh had already been transferred in concerned account of NMET maintained in SBI Delhi. Thus, by keeping the amount outside the government account not only principle of financial propriety of remitting the amount collected into government account was not adhered to but also the objective of NMET to carry out regional and detailed exploration for minerals, funding special studies and projects, undertaking studies for mineral development etc. was not achieved.


In response to audit observation, MO Rohtas remitted (May 2019) ₹ 5.31 lakh directly in government account under major head-0853 instead of public account of the State Government under major head-8449.



**(NILOTPAL GOSWAMI)**  
**Principal Accountant General (Audit)**  
**Bihar**

**Patna**  
**The 24 January 2020**

**Countersigned**



**(RAJIV MEHRISHI)**  
**Comptroller and Auditor General of India**

**New Delhi**  
**The 29 January 2020**