

CHAPTER 6
MINING RECEIPTS

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6.1 Tax administration

Mines and Minerals (Development and Regulation) Act (MMDR Act), 1957, Bihar Minor Mineral Concession Rules (BMMC Rules), 1972 and Mineral Concession Rules (MC Rules), 1960, as amended from time to time, govern mining of minerals 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 the headquarters level.

There are nine Deputy Directors of Mines at Divisional offices. 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 15¹ out of 37 units of the Department during 2018-19. Besides, audit of collection of royalty and penalty from works contractors was conducted from September 2019 to January 2020 in six units² and audit of operation of brick kilns was reviewed in another six units³ during September and December 2019. Audit noticed irregularities worth ₹ 1,080.38 crore in 57 cases as detailed in **Table-6.1**:

Table-6.1: Results of Audit			
			(₹ in crore)
Sl. No.	Categories	No. of cases	Amount
1.	Audit on the collection of royalty from works contractors	1	131.48
2.	Non-levy/short levy of auction money due to non-settlement/irregular settlement	6	375.73
3.	Non-realisation of Government revenue due to non-settlement of stone quarries	1	292.94
4.	Non-realisation of Government revenue due to non-settlement of approved stone quarries	1	117.76
5.	Loss of Government revenue due to non-realisation of settlement amount from the settlee of sand ghats/non-levy of fine for continued contravention	6	110.56
6.	Non-adherence of provisions of rules regarding non-levy of penalty for illegal procurement of minerals by works contractors.	1	14.16
7.	Non-realisation of revenue due to non-execution of the settled lease of stone quarry	1	25.68
8.	Others	40	12.07
Total		57	1080.38

¹ **DMOs** – Aurangabad, Bhojpur, Gaya, Gopalganj, Jamui, Lakhisarai, Patna, Purnea, Saharsa, Saran, Sasaram, Siwan, Supaul and Vaishali; **Director of Mines**, Patna.

² Bettiah, Gaya, Jamui, Muzaffarpur, Nawada and Saran.

³ Bhojpur, East Champaran, Madhepura, Madhubani, Patna and Purnea.

The Department accepted short levy, short realisation and other deficiencies of ₹ 716.82 crore in 469 cases between April 2018 and April 2020. Out of these 469 cases, 26 cases involving ₹ 356.34 crore were pointed out during 2018-19 and the rest during earlier years. The Department reported recovery of ₹ 12.04 lakh in five cases. The replies in the remaining cases of 2018-19 and those of earlier years was not received (May 2020).

Audit Findings

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

Mining Offices failed to ensure non-payment of bills submitted without required Forms 'M' and 'N', and also failed to levy penalty of ₹ 46.42 crore on works contractors for procurement of minerals from unauthorised sources.

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 lessees/dealers/permit holders and in case of violation, a minimum penalty equivalent to price of the mineral is leviable. The BMMC Rules provide for submission of Form 'M' and 'N'⁴ at the time of submission of bill by the works contractors as token of proof that minerals used were procured from authorised sources. Further, the Mining Department issued (January 2017) direction to the Works Department that in case of non-submission of Forms 'M' and 'N' payment to the works contractors should be stopped.

It shall be the duty of the officer who receives the said bill to send the photocopy of the forms 'M' & 'N' along with challans to the concerned Mining Officer. If the contents of the forms/affidavit on verification by the concerned Mining Officer reveal that the minerals were not purchased from any authorised lessee, it shall be presumed that the concerned minerals were obtained by illegal mining, and in such case the Mining Officer shall take action as prescribed in these Rules against the maker of the affidavit.

Audit observed (between September 2019 and January 2020) in six test-checked District Mining offices⁵ that during the years 2016-17 to 2018-19, 23 works divisions deducted royalty amounting to ₹ 46.42 crore and deposited in Government account (**Annexure-14**) from bills of works contractors who had not submitted the Forms 'M' and 'N'. However, these works divisions neither stopped payment of bills of works contractors nor deducted penalty amounting equal to royalty of ₹ 46.42 crore while making the payment. The works divisions in their reply stated that only royalty was deducted without any penalty. The Mining offices replied that correspondence with concerned works divisions will be made for realisation of penalty.

The Department stated (June 2020) that if the contractors paid the royalty voluntarily, then, as per proviso to Rule 40 (10) of the Rules *ibid* the concerned Mining Officers might not impose penalty. The reply of the Department was incorrect as proviso

⁴ which contains names and addresses of the sellers from whom the minerals were purchased and particulars of minerals.

⁵ Bettiah (West Champaran), Gaya, Jamui, Muzaffarpur, Nawada and Saran.

to Rule 40 (10) of the Rules *ibid* would be applicable only if the works contractor submits affidavits in Form 'M' and 'N', while in the instant case the works contractors did not submit such forms.

Further, Works divisions were required to submit quarterly return as prescribed by the Mining Department (Notification 2016) incorporating project-wise details of the estimated quantity of minor minerals to be used, quantity and types of minerals used, royalty/penalty deducted, etc., for the projects where Forms 'M' and 'N' have not been submitted by the contractor or verified by Division, to District Mining Offices. However, no such quarterly returns were submitted by divisions to Mining offices (Departmental reply June 2020). Further, no follow up action was made by the Mining Department to ensure compliance of this instruction. This resulted in lapse of controls in works divisions as well as Mining Department, at the same time and also increasing the risks of illegal mining activities and its adverse impacts on the environment.

6.4 Non/short realisation of royalty and penalty from brick kiln owners

During brick seasons⁶ 2017-18 and 2018-19, 260 brick kilns were operated without valid permit resulting in non-realisation of ₹ 3.85 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 (₹ 72,500 for category-III brick kilns situated in rural areas) in two equal installments. If the brick kiln owner fails to make payment of the consolidated amount of royalty in the manner so prescribed, he shall not be allowed to carry on the business. Further, Rule 4 of the Rules *ibid* provides that no person shall undertake mining operation in any area except in accordance with the terms and conditions of a quarrying permit.

As per 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 have 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 the Advocate General on a reference made by the Public Accounts Committee, Bihar.

Further, as per Schedule of Environmental Impact Assessment notification 2016 and O.M. No. L-11011/47/2011-1A.II(M), dated 24.06.2013 issued by Ministry of Environment and Forest, Government of India, environmental clearance is required and essential for excavation of brick earth. Every brick kiln owner has to obtain consent to establish and consent to operate for mining project under Section 21 of Air (Prevention & Control of Pollution), Act, 1981 from State Pollution Control Board.

⁶ Brick season is from October to June of the year.

Audit observed (October 2019) during scrutiny of files relating to brick kiln, permit register and demand, collection and balance register, etc., in District Mining Office, Motihari that 230 and 341 brick kilns were operated during brick seasons 2017-18 and 2018-19 respectively. Out of this, 228 and 340 brick kilns were operated without valid permits as only two and one permit was issued during 2017-18 and 2018-19 respectively. Audit further observed that 95 and 165 brick kilns were operated without even paying royalty during 2017-18 and 2018-19 respectively. Although, the Mining Officer, who was the permit issuing authority as well, had knowledge of the operation of the brick kilns without permit and payment of royalty as evident from the inspection reports, he neither issued notices of demand to realise royalty and penalty nor initiated any action to close these brick kilns. The inaction on the part of the Mining Officer resulted in non-realisation of royalty and penalty of ₹ 3.85 crore⁷ from 260 illegally operative brick kilns. Moreover, illegal operation of brick kilns certainly raises the risk of adverse impact on the environment.

In response to the audit observation, the Department stated (June 2020) that certificate cases had since been instituted for recovery of outstanding arrears of ₹ 2.74 crore and reported recovery of ₹ 2.46 lakh. However, the Department did not reply as to whether operation of these brick kilns were stopped as stipulated in Rule 26 A of the BMMC Rules.

6.5 Non realisation of interest from lessees of stone quarry and sand ghat

Failure of Mining Officers to levy interest on delayed/non-payment of royalty (settlement amount), which resulted in the non-realisation of ₹ 41.85 lakh.

Rule 9 A of the BMMC Rules, 1972, provides that any mineral may be leased out or settled by public auction/tender in the manner prescribed under Rule 52. As per Rule 52 (1), (4), and (5) of the Rules *ibid*, the bid amount shall be deposited on a yearly basis in equal installment, and each installment shall be deposited before 31st January. In case of auction of sand *ghat*, the due installment of each year shall be paid in three installments⁸. If any installment is not deposited before the prescribed period, simple interest at the rate of 24 *per cent* per annum shall be charged up to two months, and after that action for cancellation shall be taken. Further, clause 4 of a model form of mining lease for minor mineral prescribed under Rule 21 of the BMMC Rules provides that the lessee shall be liable to pay interest at the rate of 15 *per cent* per annum on any amount remaining payable to the State Government.

Audit observed (November 2019) from scrutiny of files of leases of stone quarries and sand ghats in two DMOs⁹ that one lease of stone quarry was executed in August

⁷ (₹ in lakh)

Year	Royalty			Penalty			Total of outstanding royalty and penalty
	Leviable	Levied	Short	Leviable	Levied	short	
2017-18	75.25	2.20	73.05	68.88	0	68.88	141.92
2018-19	124.42	0.80	123.62	119.63	0	119.63	243.24
Total	199.67	3	196.67	188.51	0	188.51	385.16

⁸ 1st installment before 15th December of the previous year, 2nd installment before 15th April and 3rd installment before 15th September.

⁹ Gaya and Nawada.

2015 and another lease for sand ghat was executed for five years (2015-19). The leaseholder of the stone quarry had to pay ₹ 7.40 crore as installment amount of each year before 31st January 2017 and 31st January 2018 respectively. However, the leaseholder paid installment amount with delays ranging between six to 37 days. Similarly, the leaseholder of the sand *ghat* had paid due installments with delays ranging between two to 90 days. Though the fact of delayed deposit of royalty was known to the concerned Mining Officers, inspite, they did not levy an interest of ₹ 41.85 lakh as detailed in **Annexure-15** for delayed payments.

In response to the audit observation, the Department stated (June 2020) that in case of DMO Nawada, notice of demand for ₹ 24.43 lakh had since been issued (February 2020) to the lessee of the sand *ghat*. The Department further stated that in case of DMO Gaya, security deposit of the lessee was forfeited, however, the Departmental reply is silent about realisation of due interest.



Patna
The 20 June 2021

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New Delhi
The 23 June 2021

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