

CHAPTER-VI : NON-TAX RECEIPTS

6.1 Results of audit

Test check of the records of the receipts from water rates, mines and minerals, forest *etc.*, conducted during the year 2007-08, revealed loss/non-recovery of revenue *etc.* and other deficiencies of Rs. 130.09 crore in 113 cases which fall under the following categories:

(Rupees in crore)

Sl. No.	Categories	No. of cases	Amount
A. Water Rates			
1.	'Water rate receipts' – A review	01	72.97
Total		01	72.97
B. Mines and Minerals			
1.	Non-initiation of certificate proceedings	9	10.44
2.	Non-levy of penalty/fees	14	7.41
3.	Non/short levy of royalty and cess	8	5.20
4.	Non-levy of interest	7	1.51
5.	Non/short levy of auction money due to non/irregular settlement of sand <i>ghats</i>	5	0.81
6.	Non-levy of stamp duty and registration fees	8	0.46
7.	Non-levy or short levy of dead rent/surface rent	1	0.11
8.	Other cases	25	25.54
Total		77	51.48
C. Forest Receipts			
1.	Non-eviction of encroached forest land	5	2.06
2.	Blockage of revenue due to non-disposal of collected timber	16	1.36
3.	Other cases	14	2.22
Total		35	5.64
Grand Total		113	130.09

During the year 2007-08, the concerned department accepted underassessment and other deficiencies *etc.* involving Rs. 40.48 crore in 76 cases, of which 64 cases involving Rs. 38.49 crore were pointed out during the year 2007-08 and the rest during the earlier years. The department recovered Rs. 48.52 lakh in three cases.

Audit findings of a review of "Water rate receipts" involving a financial effect of Rs. 72.97 crore and few other illustrative cases involving Rs. 2.38 crore are mentioned in the following paragraphs.

A : WATER RATES

6.2 Water Rate Receipts

Highlights

Absence of data regarding availability of water resources rendered the determination of available irrigation potential unrealistic and unreliable. Consequently, the department could not achieve the target fixed for irrigation which resulted in loss of revenue of Rs. 50.21 crore.

(Paragraph 6.2.7)

Lack of monitoring on the status of transfer of land to the water users association under the Participatory Irrigation Management programme resulted in shortfall of 98 *per cent* leading to the basic objective of the scheme getting defeated. Besides, the directorate was also unaware about short payment of Rs. 48 lakh by 14 users associations to whom land was transferred under the programme.

(Paragraph 6.2.8)

Due to absence of any report/return, the directorate/Government was unaware of the non-maintenance of records of *chat* land by the divisions and settlement of *chat* land without deposit of settlement amount of Rs. 1.22 crore in advance.

(Paragraph 6.2.10)

Non-preparation of *khatian* of assured and probable irrigable land resulted in non-raising of demand of water rates of Rs. 16.56 crore and short raising of demand of Rs. 4.35 crore in cases where *khatian* was prepared.

(Paragraph 6.2.11)

6.2.1 Introduction

Assessment, levy and collection of water rate, a non-tax revenue receipt of the State Government, is governed by the Bihar Irrigation (BI) Act, 1997 and also the Bihar Irrigation Flood Management and Drainage Rules (BIFMD), 2003 framed thereunder.

The Water Resource Department (WRD) is entrusted with the management of water resources mainly for the irrigation purpose through irrigation projects on the land under assured/probable irrigable command area¹ belonging to cultivable command area² and also on *chat* land³ which are irrigated by canal water for agricultural purposes.

Irrigation projects are broadly classified into major, medium and minor projects depending on agricultural command area. The classification for the purpose of levy of compulsory basic water rates at different rates is made on

¹ Assured irrigable command area means the area which have been getting irrigation water continuously since last five years while probable irrigable command area means the area, the irrigation of which is not assured but whose irrigation is subject to the availability of water.

² Cultivable command area means land which is fit for cultivation under irrigable command or an irrigation work.

³ Government land which is situated on both sides of the canal.

the basis of guaranteed depth and period of supply of water during the period of growth of the main crop of the area i.e., paddy (*kharif*) and wheat (*rabi*).

A review of the assessment, levy and collection of water rate revealed a number of system and compliance deficiencies which are mentioned in the succeeding paragraphs.

6.2.2 Organisational set up

Prior to 1975, the Deputy Secretary-cum-Special Officer was responsible for assessment and collection of water rate and its control and co-ordination. In 1975, a directorate headed by a Revenue-cum-Additional Secretary and 17 revenue divisions⁴ were established. The department was further restructured in June 2005 and all the existing 17 revenue divisions were substituted and the functions of these divisions were merged with 17 irrigation divisions (ID)⁵.

The WRD is presently headed by a Principal Secretary assisted by an Additional Secretary at the Government level, one superintending engineer (SE) in Irrigation Monitoring Circle at the directorate level, 10 chief engineers (CE) in command areas. At the divisional level, the executive engineer (EE) is assisted by assistant engineers (AE) and junior engineers (JE).

6.2.3 Audit Objectives

The review was conducted with a view to ascertain whether

- the provisions in the BI Act and Rules made thereunder were adequate;
- water rates were properly assessed, collected and deposited in the prescribed head of account as per the provisions of the BI Act and Rules made thereunder;
- the irrigation potential was created/increased by the department in respect of major/medium irrigation projects and revenue generated from these; and
- internal control mechanism within the department was adequate and effective to check leakage of revenue.

6.2.4 Scope of audit

The review was conducted between January and June 2008 in which records for the period from 2002-03 to 2006-07 of six⁶ out of 17 IDs and office of the Director, Monitoring Cell were reviewed. The selection of the divisions was

⁴ Deputy Collector, Revenue division, Ara, Araria, Aurangabad, Bettiah, Bhagalpur, Biharsharif, Buxar, Gaya, Gopalganj, Madhubani, Mohania, Motihari, Muzaffarpur, Patna, Purnia, Saharsa and Tarapur.

⁵ Irrigation division, Araria; Irrigation division, Bhagalpur; Irrigation division, Purnia; Irrigation Canal division, Saharsa; Irrigation division, Tarapur; Gandak Canal division, Gopalganj; Sone Canal division, Ara; Sone High Level Canal division, Aurangabad; Sone Canal division, Buxar; Sone High Level Canal division, Bhabhua; Sone Canal division, Patna; Tirhut Canal division No. I, Bettiah; Tirhut Canal division No. I, Motihari; Water Ways division, Biharsharif; Water Ways division, Gaya; Water Ways division, Muzaffarpur and Western Kosi Canal division, Madhubani.

⁶ Sone Canal division, Ara; Sone High Level Canal division, Aurangabad; Sone Canal division, Buxar; Sone High Level Canal division, Bhabhua; Tirhut Canal division No. I, Bettiah; Tirhut Canal division No. I, Motihari.

based on statistical sampling through population proportionate sampling with replacement (PPSWR) method.

6.2.5 Acknowledgment

Indian Audit and Accounts Department acknowledges the co-operation of the WRD in providing necessary information and records to audit. The findings of the review were forwarded to the Government and the department in July 2008 and were discussed in the Audit Review Committee meeting held on 26 September 2008. The SE (monitoring), WRD represented the Government. The reply of the Government has been suitably incorporated in the respective paragraphs.

Audit findings

6.2.6 Trend of revenue

According to the provisions of Bihar Budget Procedures, the estimates of the revenue receipts should show the amount expected to be realised within the year (demand) and that only. The arrear and current demands should be shown separately and reasons given, if full realisation cannot be expected. In case of fluctuating revenue, the estimates should be based upon the comparison of the last three year's receipt.

A comparison of the demand for the year 2002-03 to 2006-07, corresponding budget estimate (BE) and targets fixed by the department as well as actual receipts were as mentioned below:

(Rupees in crore)

Year	Demand	B E	Target fixed by the department	Actual Receipt	Percentage of BE against total demand	Percentage of variation between BE and actual receipt
	Arrear	Major		Major		
	Current	Medium		Medium		
	Total	Total		Total		
2002-03	95.59 26.35 121.94	NIL 29.87 29.87	14	NIL 15.43 15.43	(-) 76	(-) 48
2003-04	111.43 29.23 140.66	NIL 30.00 30.00	30	NIL 26.22 26.22	(-) 79	(-) 13
2004-05	129.89 25.08 154.97	NIL 30.00 30.00	25	NIL 20.82 20.82	(-) 81	(-) 31
2005-06	147.45 26.24 173.69	15.00 1.50 16.50	16.50	1.63 10.82 12.45	(-) 91	(-) 75
2006-07	165.66 19.44 185.10	25.00 1.50 26.50	26.50	1.95 10.95 12.90	(-) 86	(-) 49

Thus, the BEs were not prepared keeping in view the arrear and current demand of the department during the year. While the demands were increasing the BEs were fixed with a wide variation ranging between (-) 76 and (-) 91 per cent. This indicates that the BEs were not prepared as per the budget

procedures and thus unrealistic. Besides, it was also seen that though the BE was framed far below the total demand for the years, yet during the years 2002-03 and 2004-05, the targets were fixed even below the corresponding BEs *i.e.* Rs. 14 crore and Rs. 25 crore against Rs. 29.87 crore and Rs. 30 crore respectively.

Further, even though the BEs were fixed much lower than the actual demand of the department during the year, yet a comparison of the the actual receipts with the BEs showed wide variations ranging between (-) 13 per cent to (-) 75 per cent.

After this was pointed out, the Government in September 2008 stated that the BE is prepared on the basis of the previous budget. Sometimes the BE is revised as per direction of the Finance Department and that is why there are fluctuations in the BEs of different years. Similarly the target is fixed by the Finance Department after reviewing the proposed BEs. They, however, assured to take necessary action to fix the BEs considering the arrear and current demand. The reply did not address the reason for fixing target below the BEs during the years 2002-03 and 2004-05.

System deficiencies

6.2.7 Irrigation potential and target of irrigation

6.2.7.1 Short utilisation of irrigation potential

Water is the backbone of irrigation potential, however, the availability of water is limited. Assessment of water rate receipt is based on utilisation of water for irrigation purpose. The details of water account including transit loss of water and balance quantity of water for irrigation purpose is required to be prepared at the divisional level. Audit scrutiny revealed that none of the irrigation divisions covered in the review prepared the water account. Also, no report/return has been prescribed to be furnished by the divisions to the higher authorities mentioning the details of water resources available for irrigation purposes. Due to these, the directorate/Government was unaware of the actual availability of water resources for irrigation.

Scrutiny further revealed that although the directorate/Government did not have the details of available water resources, yet the available irrigation potential was upwardly revised during all the years covered in the review. The table below indicates the cultivable command area (CCA) for irrigation, available irrigation potential determined and potential actually utilised during the last five years (based on the Administrative Report of the department).

(in thousand hectares)

Year	CCA	Available irrigation potential	Percentage of increase in potential with reference to 2002-03	Actual area irrigated	Non-utilisation of potential	Percentage of utilisation of irrigation potential (+) surplus/ (-) shortfall
2002-03	7,957.4	2,509	-	1,594.12	917.88	(-) 64
2003-04	7,957.4	2,574	2.59	1,677.06	896.94	(-) 65
2004-05	7,957.4	2,619	4.38	1,528.45	1,090.55	(-) 58

2005-06	7,957.4	2,636	5.06	1,665.09	970.91	(-) 63
2006-07	7,957.4	2,832	12.87	1,469.89	1,362.11	(-) 52
Total		13,170		7,934.61	5,238.39	

Thus, during 2002-03 to 2006-07, out of 13,170 thousand hectares of available irrigation potential, only 7,934.61 thousand hectares of potential was utilised and the remaining 5,238.39 thousand hectares remained unutilised. The wide variation between the available irrigation potential and the actual area irrigated indicates that the available irrigation potential was determined hypothetically without considering the available water resources.

After this was pointed out, the department accepted the audit observation in September 2008 and agreed to maintain the water account at AE/EE level.

6.2.7.2 Shortfall in achievement of the target of irrigation

During test check of the records of the SE Monitoring Circle, at the directorate level, it was noticed that though the target fixed for irrigation for the year 2002-03 to 2006-07 was much below the total available irrigation potential, even then there has been shortfall in its achievement as mentioned below:

(In thousand hectares)

Year	Available irrigation potential	Crop wise target and irrigation				Total target and irrigation			Percentage of shortfall
		<i>kharif</i>		<i>rabi</i>		Target	Irrigation	Difference	
		Target	Irrigation	Target	Irrigation				
2002-03	2,509	1,653.48	1,188.09	463.37	390.87	2,116.85	1,578.96	537.89	(-) 25
2003-04	2,574	1,653.48	1,250.56	597.64	414.58	2,251.12	1,665.14	585.98	(-) 26
2004-05	2,619	1,654.01	1,161.58	448.13	355.08	2,102.14	1,516.66	585.48	(-) 28
2005-06	2,636	1,642.77	1,253.46	512.95	399.99	2,155.72	1,653.45	502.27	(-) 23
2006-07	2,832	1,389.00	1,222.32	477.62	477.62	1,866.62	1,699.94	166.68	(-) 9
Total		7,992.74	6,076.01	2,499.71	2,038.14	10,492.45	8,114.15	2,378.30	

Thus, due to non-irrigation of 2,378.30 thousand hectares of land, not only the cultivators were deprived of the irrigation facility, the Government also suffered a loss of revenue amounting to Rs. 50.21 crore.

After this was pointed out, the Government accepted the shortfall and stated in August 2008 that the shortfall in achievement against the targets is due to poor condition of the canals and the renovation work would be carried out stage by stage. The reply is not tenable as the target for irrigation was fixed after detailed analysis and was far below the available irrigation potential.

The Government may consider making it mandatory for the divisions to prepare water account. They may also consider prescribing report/return to be furnished by the divisions to the directorate/Government indicating the available water for irrigation and determination of the available irrigation potential and the targets thereon based on these data.

6.2.8 Participatory Irrigation Management Programme

The tenth five year plan (2002-07) targeted to cover 50 *per cent* of the created irrigated potential by participatory irrigation management (PIM) programme.

Accordingly, the EE of respective division of the WRD on behalf of the Government is required to transfer the management (operation, assessment and collection of water rate) of a canal system for a fixed period to that water user association which will work as authorised System Canal Level Committee (SLC) with the help of Village Level Committee (VLC), who have applied for it in prescribed form and whom the WRD would consider competent for this and issue permission. As per the BIFMD Rules, a memorandum of understanding (MOU), an agreement between the EE of the concerned division (representative of the Governor of Bihar) and the Association (representative of farmers/water users' of concerned area), will be executed.

The rules also provide that the assessment of water rate for the first five years shall be done on the basis of the average irrigated area in three consecutive *kharif* and *rabi* season just before the transfer of the canal system and the water user association shall deposit the Government share amount (30 per cent) as agreed in the MOU and the balance amount (70 per cent) shall be kept with itself to be spent on maintenance and operation of the canal and its development. Also as per rule 3.6.9 (b), the association shall deposit the aforesaid share of water charges every year (for *kharif* before 31 March and for *rabi* before 30 June) in the Government account as per the prescribed procedure.

Further, if the water charges payable to the Government is not deposited by the water user association within stipulated time, the supply of water shall be stopped in the next season and action shall be initiated for realisation of dues as per the Rules.

Audit scrutiny revealed that no report/return has been prescribed to be furnished by the divisions to the higher authorities mentioning the status of applications received from the water user association and their disposal. Due to this, the directorate/Government was unaware of the position of the settlement of applications made by the water user associations and the revenue realised from the settled cases.

6.2.8.1 Shortfall in achieving target

During test check of the records at the directorate, it was noticed that out of total cultivable command area of 79,57,400 hectares, only 1,39,507 hectares land under different distributaries had been transferred amongst 45 water user associations formed by the farmers during the period 2002-03 to 2006-07 and 6,600 hectares of cultivable command area to a water user association during the year 1996-97. Thus, altogether 1,46,107 hectares land of cultivable command area which is 1.84 per cent of the total cultivable command area could be covered against the targeted 50 per cent. The created irrigation potential-distributaries wise and farmer's committee wise were not made available to audit though called for. As no report/return was prescribed to be furnished by the divisions to the higher authorities, the directorate and the Government remained unaware of the low percentage of transfer of land to the water user associations. Due to this, 50 per cent of the cultivable command area could not be covered under the PIM programme, hence defeating its basic purpose.

After this was pointed out, the Government stated in August 2008 that the major constraint in transfer of land to the association was non-completion of repair work of the distributaries and would be carried out under different modernisation schemes.

6.2.8.2 Non-adherence to the agreement

During test check of records in three IDs⁷, it was noticed that the management of 14 canal system were transferred to 14 water user associations during 2005-06 (with effect from *rabi* crop season). The associations were liable to pay share equal to 30 *per cent* of the revenue of the total irrigated area relating to *kharif* and *rabi* and accordingly the share amount worked out to Rs. 57 lakh for the year 2005-06 and 2006-07 against which Rs. 9 lakh only was paid by these associations. Neither any action was taken for realisation of balance share of Rs. 48 lakh as per the rules and agreement nor was the water supply stopped to the defaulting water user associations.

After this was pointed out, the Government stated in August 2008 that the concerned EEs have been instructed to take necessary action against the defaulting farmers/associations. A report on recovery of the balance amount has not been received (October 2008).

6.2.9 Revenue recovery mechanism

Under the Bihar Financial Rules (BFR), it is the duty of the controlling officer to ensure that the Government dues are correctly and promptly assessed, collected and remitted into the treasury.

As per the BIFMD Rules framed under the BI Act, the arrear of water charges shall be deemed as demand and each arrear of water charges payable to the Government shall be realised according to the Rules. Further as per schedule-I under Section 3(6) of the Public Demands Recovery (PDR) Act, 1914, the amount due to the Government is required to be paid within the prescribed period. In case of default, the recovery is to be made as arrear of demand and accordingly the dues remaining unpaid and declared as arrear must be recovered by filing certificate case by the requiring officer (RO) to the certificate officer (CO) in terms of section 4 of the PDR Act. As per the instructions of the Board of Revenue under the PDR Act, the RO and the CO are jointly responsible for the speedy disposal of the certificate cases.

The RO is primarily responsible for systematic application for certificate case, the prompt disposal of objections and the early application for execution. He is also required to ensure that execution proceedings are progressing satisfactorily.

Audit scrutiny revealed that the yearwise position of recovery of arrears of revenue was not being maintained in any of the divisions covered in the review. Although report/return has been prescribed to be furnished by the divisions to the directorate, it was seen that the divisions reported the cumulative figures of recovery instead of furnishing year-wise details of revenue recovered. Also, there was no monitoring of the reports/returns submitted by the divisions at the directorate. Due to these deficiencies, the directorate/Government were not aware of the yearwise position of arrears of

⁷ Ara, Bhabhua and Buxar.

revenue and the status of their recovery and hence could not pursue the matter with the divisions for expeditious recovery of arrears.

6.2.9.1 Position of outstanding revenue

As per the details provided by the department, the overall position of arrears of revenue, current demands and their recovery for the last five years were as mentioned below:

(Rupees in crore)

Year	Demand			Collection			Balance dues			Percentage		
	OB Arrear	Current	Total	Arrear	Current	Total	Arrear	Current	Total	Arrear (5 to 2)	Current (6 to 3)	Total (7 to 4)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)
2002-03	95.59	26.35	121.94	5.60	4.91	10.51	89.99	21.44	111.43	5.85	18.63	11.48
2003-04	111.43	29.23	140.66	4.92	5.85	10.77	106.51	23.38	129.89	4.46	20.01	21.32
2004-05	129.89	25.08	154.97	3.83	3.69	7.52	126.06	21.39	147.45	2.95	14.71	16.13
2005-06	147.45	26.24	173.69	6.90	1.13	8.03	140.55	25.11	165.66	4.68	4.30	9.50
2006-07	165.66	19.44	185.10	6.73	3.11	9.84	158.93	16.33	175.26	4.06	16.00	14.32

Thus, out of the total outstanding dues of Rs. 175.26 crore, Rs. 1.04 crore only was covered under the certificate proceedings. The figure of certificate case relates to the month of March 2005 and since then no account of certificate case was maintained either at directorate level or at the Government level.

Further, the overall collection of revenue was very poor ranging between 2.95 and 5.85 per cent against the arrear demand and between 4.30 and 20.01 per cent against the current demand. Thus, due to lack of monitoring and pursuance by the directorate/Government, substantial revenue remained unrecovered during the period of review.

After this was pointed out, the department stated in May 2008 that the main reason for balance of arrears were shortage of staff, lack of farmer's consciousness to pay revenue in time and also after the dissolution of office of Deputy Collectors in 2005, the power of instituting certificate case against the defaulter farmers was no more with the department. The reply of the department is not tenable as the PDR Act did not debar the divisions to initiate certificate case proceeding by filing the requisition before the CO of the concerned district.

Test check of the records of six IDs⁸ disclosed that the percentage of revenue collection against the total demand during the year 2002-03 to 2006-07 ranged between 1.27 and 14.53 per cent which showed that 85 and 99 per cent of the total demand remained unrecovered in these divisions leading to blockage of revenue. Similarly, the collection against the current demand ranged between 0.81 and 23.19 per cent (except 40 per cent during 2006-07 in Aurangabad district) during 2002-03 to 2006-07. This reflects that 77 per cent to 99 per cent of the current demand also remained unrecovered leading to accumulation of arrears and ultimately blockage of revenue amounting to Rs. 58.82 crore.

⁸ Ara, Aurangabad, Bettiah, Bhabhua, Buxar and Motihari.

6.2.9.2 Loss of revenue due to non-filing of certificate cases

Under the PDR Act, interest on public demand to which the certificate relates, shall be charged at the rate of 12 *per cent* per annum from the date of signing of certificate upto the date of realisation. Audit scrutiny revealed that no time limit is prescribed for sending the cases to the certificate officer for recovery of dues as arrears of land revenue.

During test check of the records in six IDs⁹, it was noticed that though an amount of Rs. 58.82 crore against the current demand of Rs. 65.09 crore pertaining to the period 2002-03 to 2006-07 were lying as arrears of revenue, yet, certificate proceedings under the PDR Act was not initiated even in a single case during the course of review. Thus, due to non-filing of certificate cases even after lapse of one to four years, the Government was deprived of revenue of Rs. 13.86 crore of interest.

After this was pointed out, the Government accepted the audit observation and stated in August 2008 that District Magistrates have been requested to delegate the power of certificate cases to the concerned EEs. The reply was, however, silent regarding failure of the EEs to file certificate cases with the COs of the concerned districts.

The Government may ensure effective monitoring of the revenue recovery mechanism by the directorate for timely recovery of dues. They may also consider prescribing a specific time limit for filing certificate cases on the arrear dues.

6.2.10 Collection of revenue from settlement of *chat* land

Under the Bihar Irrigation Manual and the directive issued by the department in December 1997, *chat* land is to be settled every year on lease for nine months for the period from June to March of next year for cultivation to persons belonging to landless schedule caste and other poor class on priority basis. The settled amount of *chat* land along with the amount of water rate for *kharif* and *rabi* should be collected in advance before signing the lease document.

6.2.10.1 Non-maintenance of records of *chat* land

During test check of the records, it was noticed that none of the six divisions covered in the review maintained the status of *chat* land such as total *chat* land in the division, *chat* land transferred to other division/department as well as under modernisation of canal system, *chat* land under encroachment, *chat* land not fit for settlement, total *chat* land settled, the amount realised at the time of signing the deed and the balance amount to be realised. Also, there was no system of any periodic report/return to be furnished by the divisions to the directorate furnishing these details of *chat* land which weakened the monitoring mechanism. Due to non-maintenance of basic records by the divisions and lack of monitoring by the directorate, though the Government has called for the aforesaid data/information between February 2000 and April 2008, these could not be furnished by the divisions/directorate even after a lapse of more than seven years.

⁹ Ara, Aurangabad, Bettiah, Bhabhua, Buxar and Motihari.

6.2.10.2 Loss of revenue due to non deposit/collection of settled amount in advance

During test check of the records in four¹⁰ out of six IDs, it was noticed that 17,021.36 acres of *chat* land was settled during 2002-03 to 2006-07 and the settled amount worked out to Rs. 1.98 crore as per the prescribed rate effective from 2001-02. Of this, Rs. 76 lakh only could be collected at the time of signing the lease deeds leaving a balance of Rs. 1.22 crore unrecovered. As there was no monitoring mechanism put in place, the directorate/Government was unaware regarding the settlement of the *chat* land without deposit of settlement amount in advance which led to loss of revenue of Rs. 1.22 crore.

After this was pointed out, the Government stated in August 2008 that action would be taken against defaulters. A report on recovery has not been received (October 2008).

The Government may make it mandatory for the divisions to maintain the basic records relating to *chat* land. They may also prescribe report/return to be furnished by the divisions to the directorate mentioning these details for strengthening the monitoring mechanism.

6.2.11 Raising of demand

Under the BI Act and the Rules framed thereunder, preparation of the statement of land irrigated (*sudkar*), cultivator wise measurement (*kheshra*) and demand statement (*khatian*) are required to be prepared and completed by 30 November for *kharif* and 30 April for *rabi* crops by the WRD for recovery of water rates from the beneficiaries to whom water is supplied for irrigation purpose. These statements are to be prepared by the AE and forwarded to the EE for recovery of water rate. Simultaneously a *purcha*¹¹ containing the last date and place of payment of assessed water charges is required to be issued to the farmer and his signature obtained on the prescribed register.

Further, for assured irrigable land, a permanent *khatian* shall be prepared by the *Ziladar*/JE in charge with the help of *amin*¹² and on that basis, demands are to be raised and water rates collected.

6.2.11.1 Non-preparation of permanent *khatian* for assured irrigable land

During test check of the records in four IDs¹³, it was noticed that out of assured irrigable land of 41,65,820 acres each of *kharif* and *rabi* crops, *khatians* of only 36,04,933 acres of *kharif* and 27,30,437 acres of *rabi* were prepared during the years 2002-03 to 2006-07. Thus, *khatians* for 5,60,887 acres of *kharif* and 14,35,383 acres of *rabi* land irrigated during the years 2002-03 to 2006-07 were not prepared as of March 2008. This resulted in non-raising of demand and non-collection of water rates of Rs. 4.94 crore for *kharif* and Rs. 10.77 crore for *rabi* crops.

¹⁰ Ara, Aurangabad, Bhabhua and Buxar.

¹¹ Demand statement of the concerned farmer.

¹² A qualified person who measures the area of the land.

¹³ Ara, Aurangabad, Bhabhua and Buxar.

After this was pointed out, the Government agreed (September 2008) to issue instruction for preparation of permanent *khatian*.

6.2.11.2 Non-preparation of *khatian* for probable irrigable land

During test check of the records in two IDs¹⁴, it was noticed that the probable irrigable land of 1,57,034 hectares *kharif* and 80,570 hectares *rabi* land was irrigated during the period 2002-03 to 2006-07 against which *khatians* of only 1,27,450 hectares of *kharif* and 69,540 hectares of *rabi* land were prepared. Thus, *khatians* for 29,584 hectares of *kharif* and 11,030 hectares of *rabi* land irrigated during the years 2002-03 to 2006-07 were not prepared. It was also noticed that *purchas* which was required to be issued within one month of irrigation, was not found on record. This resulted in non-raising of demand and non-collection of water rates of Rs. 84.74 lakh.

After this was pointed out, the Government accepted the audit observation and agreed (September 2008) to issue necessary instructions for preparation of *khatian*.

6.2.11.3 Short raising of demand

During test check of the records in two IDs¹⁵, it was noticed that although *khatians* for Rs. 18.69 crore pertaining to the period from 2002-03 to 2006-07 were prepared, but demands for recovery of water rates were raised for Rs. 14.34 crore only. This resulted in short raising of demand and non-collection of water rates of Rs. 4.35 crore.

After this was pointed out, the Government stated (September 2008) that instruction have been issued for raising the demand for recovery of balance amount. A report on recovery has not been received (October 2008).

The Government may make it mandatory for the IDs to prepare *sudkar*, *khesra* and *khatians* and raise demand for prompt recovery of dues and remittance into the Government account. Also, monitoring mechanism may be strengthened by prescribing reports/returns to be furnished to the directorate mentioning the status of preparation of *sudkar*, *khesra* and *khatians* and position of revenue realisation.

6.2.12 Internal Audit

Internal audit, a vital component of the internal control systems, enables an organisation to assure itself that the prescribed systems are functioning reasonably well. The internal audit of different departments of State Government were centralised under the Finance Department in 1953. On enquiry it was learnt that the internal audit of the departments was being conducted on the basis of the requisition received from the administrative department for its subordinate offices. Regarding the internal audit of revenue receipts under Irrigation Department (WRD), it was reported by the SE, Irrigation Monitoring Circle (Directorate Canal Office) that some irrigation divisions have been audited by the Finance Department (Internal auditor) during the period from 2002-03 to 2006-07.

¹⁴ Bettiah and Motihari.

¹⁵ Buxar and Motihari.

The details regarding number of offices due for audit, number of offices actually audited and position of internal audit reports, paragraphs issued and settled were not furnished by the Irrigation Department (June 2008) despite being requested. The department was also not in a position to state the number of requisition sent during the years under review.

Thus, internal audit which is an important tool in the hands of the management of an organisation for ensuring its efficient functioning has been rendered ineffective and non-functional.

The Government may take immediate steps to make it mandatory for the Internal Audit Wing to conduct periodic inspection to ensure strict compliance with the Acts and Rules for better management of the resources and optimum collection of revenue.

Compliance deficiencies

6.2.13 Non-monitoring by the Chief Engineer

The Government of Bihar, WRD, through a resolution issued in May 2005 decided to dissolve the Directorate of Revenue with effect from June 2005 and substitute the existing 17 revenue divisions by the same number of irrigation divisions alongwith their assets and liabilities, staff as well as the work of demand, collection and remittances into respective treasuries under the jurisdiction of 10 CEs.

During test check of the records in three IDs¹⁶ under the jurisdiction of two CE (Aurangabad and Valmikinagar), it was noticed that the staff of old revenue divisions and their works such as preparation of *sudkar*, *khesara*, *khatian* as well as collection of arrears and current demands of revenue by these three IDs were transferred and scattered to 13 different engineering divisions by the order of the CE, thus violating the Government resolution. This also affected the collection of revenue.

After this was pointed out, the department accepted (June 2008) the audit observation and issued directives to all the CEs for cent *per cent* adherence to the Government resolution and report accordingly. A report on compliance has not been received (October 2008).

6.2.14 Non-raising of bills/demand for expenditure incurred on *mate* and seasonal workers

As per BIFMD Rules, *mate*¹⁷ and seasonal workers shall remain as usual for smooth regulation of canals only during the current crop season at the time of transfer of land under Participatory Irrigation Management programme to farmer's committee and salaries be paid by the department for the time being. But the expenditure incurred on their salary and wages will be reimbursed to the department/Government by the water user association after collection of the water rent. This amount will be in addition to the agreed share amount of 30 *per cent* payable to the Government. An affidavit/undertaking to this effect

¹⁶ Aurangabad, Bettiah and Motihari.

¹⁷ Leader of the seasonal worker/labourer specially deputed at canal site for smooth running of flow of water for irrigation.

shall be obtained by the EE from the association before the actual transfer of irrigated land to them.

During test of the records, it was noticed that five distributaries relating to Ganga Pump Canal division under ID, Buxar were transferred to five water user associations in December 2005 (i.e. from *rabi* season of 2005-06). An expenditure of Rs. 1.18 lakh on salary and wages of *mate* and seasonal workers were spent by the division during 2005-06 and 2006-07. But neither the association reimbursed the amount as per the agreement nor was any bill raised by the division for the reimbursement of the amount. This resulted in non-realisation of revenue of Rs. 1.18 lakh.

After this was pointed out, the Government stated in August 2008 that the divisions would be instructed to raise the bill against the water user associations. A report on recovery of dues has not been received (October 2008).

6.2.15 Underassessment of water rates

The Government of Bihar, WRD, in November 2001 notified that water charges at the rate of Rs. 88 per acre for *kharif* and Rs. 75 per acre for *rabi* will be leviable with effect from the *rabi* crop of the year 2001-02.

During test check of the records of East High Level Canal division, Tekari (Aurangabad), it was noticed that *khatian* for 77,191.80 acres of land was prepared in case of *kharif* crop during 2002-03 and demand for Rs. 54.13 lakh was incorrectly raised for the said irrigable land instead of Rs. 67.93 lakh as per the prevailing rate of Rs. 88 per acre. This resulted in underassessment of water rates of Rs. 13.80 lakh.

After this was pointed out, the concerned authority stated that *khatian* was related to the years prior to the year 2001, hence demand as per lower rate was raised. The reply is not tenable as no records were produced to audit to substantiate the reply. Further reply has not been received (October 2008).

6.2.16 Conclusion

The department has not been able to utilise the sizeable irrigation potential due to non-preparation of water account by the divisions and lack of monitoring at the level of directorate. Due to absence of reports/returns to be furnished by the divisions regarding transfer of land to the water user associations under the Participatory Irrigation Management programme, the directorate was unaware of non-achievement of the target fixed in the tenth five year plan. Revenue recovery mechanism was weak as evidenced by low percentage of recovery of arrears ranging between 9.5 and 21.32 *per cent*. Besides, there was no time line prescribed for filing certificate cases for recovery of arrears which resulted in huge accumulation of arrears. Due to lack of monitoring, the directorate was unaware of non-maintenance of records relating to *chat* land by the divisions and settlement of *chat* land without realising revenue in advance. The internal control mechanism of the department was weak and ineffective as evidenced by absence of internal audit.

6.2.17 Summary of recommendations

The Government may consider implementation of the following recommendations for rectifying the system and compliance issues by

- making it mandatory for the divisions to prepare water account. They may also consider prescribing report/return to be furnished by the divisions to the directorate indicating the available water resources for irrigation and determination of the available irrigation potential and the targets thereon based on these data;
- ensuring effective monitoring of the revenue recovery mechanism by the directorate for timely recovery of dues. Also, a specific time limit for filing certificate cases on the arrear dues may be prescribed;
- making it mandatory for the divisions to maintain the basic records relating to *chat* land. Reports/returns to be furnished by the divisions to the directorate mentioning these details may be prescribed for strengthening the monitoring mechanism;
- making it mandatory for the IDs to prepare *sudkar*, *khesra* and *khatians* and raise demand for prompt recovery of dues and remittance into the Government account. Monitoring mechanism may be strengthened by prescribing reports/returns to be furnished to the directorate mentioning the status of preparation of *sudkar*, *khesra* and *khatians* and position of revenue realisation; and
- taking appropriate measures to make it mandatory for the internal audit wing to conduct periodic inspection to ensure strict compliance with the Acts and Rules for better management of the resources and optimum collection of revenue.

B : MINES AND MINERALS

6.3 Non-levy of penalty for illegal mining of brick earth

Under the provisions of Bihar Minor Mineral Concession (BMMC) Rules, 1972 and notification issued thereunder, brick kilns are classified into different categories. The brick kiln owners are required to pay the consolidated amount of royalty at rates varying between Rs. 50,000 and Rs. 90,000 per season per kiln in two equal instalments at the prescribed rates (first instalment of 50 *per cent* is to be paid before commencement of the operation of the kiln and the second instalment of 50 *per cent* is to be paid before March of that year) based on the category of the brick kiln. Further, Rule 40(8) provides that whoever removes minor mineral without a valid lease/permit, shall be liable to pay the price thereof as penalty. The Government may also recover from such person rent, royalty or taxes, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

During test check of the records in five district mining offices¹⁸ (DMO) between December 2007 and March 2008, it was noticed from the brick kiln

¹⁸ Darbhanga, Gopalganj, Saran, Sitamarhi and Siwan.

registers that 228 brick kilns were operated in brick season¹⁹ 2005-06 and 2006-07 without paying the consolidated amount of royalty and without any valid permit. Though the DMOs detected the unauthorised operation of the kilns, yet no action was taken against the brick kiln operators to levy and realise the price of minerals as penalty. Thus, taking the minimum price of mineral equivalent to royalty, there was non-levy of penalty of Rs. 1.17 crore.

After the cases were pointed out, the Government replied in July 2008 that the DMOs concerned were instructed (June 2008) to ensure the realisation of the consolidated royalty alongwith the interest and these cases did not attract penalty under the BMMC Rules. The reply is not tenable as the brick kilns operated without obtaining valid permit as per the provisions of BMMC Rules and thus penalty under the BMMC Rules was leviable for illegal mining.

6.4 Non-imposition of penalty against works contractors for illegal procurement of minerals

The BMMC Rules provide that a works contractor shall purchase the mineral from the lessees/permit holders and authorised dealers only. The Works Department shall not accept any bill which the works contractors submit to recover the cost of minerals used by them in completion of the work unless the bill is accompanied with the prescribed forms 'M'²⁰ and 'N'²¹ describing the names and addresses of the dealers from whom the minerals were purchased. It shall be the duty of the officer, who receives the bill, to send the photocopy of the form and particulars to the concerned district mining officer/assistant mining officer. If verification of the contents of the forms, by the concerned mining officer reveals that the minerals are not purchased from bonafide lessee, it shall be presumed that the concerned mineral was obtained by illegal mining and in that event the concerned mining officer shall take action as prescribed in the rule against the works contractors.

During test check of the records of three DMOs²² between January and February 2008, it was noticed that none of the executing agencies in these districts had sent the requisite photocopies of form 'M' and 'N' to the DMOs for verification. However, a verification of records of the treasury officers of these districts revealed that the executing agencies during 2006-07 levied royalty of Rs. 75.21 lakh on the contractors for use of minerals and deposited it into the Government account. This indicates that the minerals were not purchased from authorised lessee/dealer and the contractors were thus liable to pay penalty of Rs. 75.21 lakh, which was not levied by the mining officers.

After the cases were pointed out, the Government replied in July 2008 that the concerned mining officers were instructed (June 2008) to obtain the form 'M' and 'N' and verify the same. The reply is not tenable as the cases pointed out relates to unauthorised extraction as evident from the deduction of royalty by the executing agencies from the bills of contractors. A report on further development has not been received (October 2008).

¹⁹ Brick season starts from the month of October every year to March of subsequent year.

²⁰ Form 'M' is affidavit for the name and address of the users.

²¹ Form 'N' is particulars of minerals purchased.

²² Gopalganj, Sitamarhi and Siwan.

6.5 Non-levy of interest for belated payment of auction/bid money

Under the BMMC Rules, the Government may charge simple interest at the rate of 24 *per cent* per annum on any rent, royalty or fee or other sum due to the Government.

During test check of the records of the DMO, Jehanabad in January 2008, it was noticed that 36 stone crusher owners and five settlees of sand *ghat* paid the mining dues for the period between January 2005 and January 2008 belatedly after delays ranging between 1 and 534 days. For delayed payment of dues, interest of Rs. 24.94 lakh though leviable, was not levied.

After the case was pointed out, the Government replied in July 2008 that demand notices were issued to the concerned stone crusher owners/settlees of sand *ghats* by the DMO, Jehanabad for depositing the amount of interest. A report on recovery has not been received (October 2008).

6.6 Loss of revenue due to non-execution of deeds of settlement

Under the provision of the BMMC Rules, settlement of sand *ghats* is done for one calendar year by the collector of the district by public auction and a deed of settlement is to be executed within 60 days of the order of the settlement on payment of stamp duty as prescribed in the Indian Stamp Act, 1899. Surcharge equivalent to the stamp duty and additional surcharge at the rate of 10 *per cent* are also leviable under the Bihar Finance Act of 1977. In case of non-execution of deed, the settlement order shall be deemed to have been revoked.

During test check of the records in three DMOs²³ between January and February 2008, it was noticed that 14 sand *ghat*/stone crusher areas were settled at Rs 3.34 crore for the years 2006 and 2007 without executing the deeds of settlement as required under the rules. This resulted in loss of stamp duty of Rs 21.03 lakh including surcharge of Rs. 11.02 lakh.

After the cases were pointed out, the Government replied in July 2008 that orders have been issued to the defaulters by the DMOs concerned for submitting the required stamp papers. The assistant mining officer, Siwan has also instituted a certificate case for Rs. 60,480. A report on further development has not been received (October 2008).

C : FOREST RECEIPTS

6.7 Non-eviction from encroached forest land

Under the Indian Forest Act, 1927 as amended from time to time, encroachment of forest land is a cognizable and non-bailable offence. Any forest officer not below the rank of the divisional forest officer (DFO), if he has reason to believe that encroachment of Government forest land has taken place, may evict the encroachers and use all the powers conferred on a magistrate under the Bihar Public Land Encroachment Act (BPLE Act), 1956. The Act further provides for realisation of royalty and compensation for damages to the forest produce and the forest land from the encroachers.

²³ Jehanabad, Sitamarhi and Siwan.

Continuance of encroachment and any unauthorised activity on the forest land tantamounts to violation of the orders of the Supreme Court²⁴ which directed complete eviction of the encroachers from the forest land. The Principal Chief Conservator of Forest (PCCF), Bihar issued instruction in June 2003 for departmental action against the forest officers for any slackness in compliance with the apex court's orders.

During test check of the records in three forest divisions²⁵ between April 2007 and March 2008, it was noticed that an area of 26.0976 hectares of forest land was encroached during 2002-03 to 2006-07. Despite the directives of the PCCF and orders of the apex court, no action was taken by the department to ensure eviction of the encroachers from the forest land. The revenue for damage to standing trees with compensation was also not assessed by the department for realisation from the encroachers. At the minimum net present value of Rs. 5.80 lakh per hectare, the value of encroached forest land works out as Rs. 1.51 crore.

After the cases were pointed out, two DFOs²⁶ stated between May 2007 and March 2008 that necessary action would be taken to free the encroached land while DFO, Kaimur stated in January 2008 that reply would follow.

The cases were reported to the Government in May 2008; their reply has not been received (October 2008).

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²⁴ Writ Petition (Civil)-202 of 1995 T N Godavaram Thirumalpad Vs. Union of India.

²⁵ Kaimur, Munger and Nalanda.

²⁶ Munger and Nalanda.