

## CHAPTER 7 : Mineral Concession, Fees and Royalties

### 7.01 Results of Audit

Test check of the records of mining offices, conducted in audit during the year 2001-02, revealed under assessments and losses of rent, royalty, fee etc. amounting to Rs. 32.63 crore in 66 cases, which broadly fall under the following categories:

(Rupees in crore)			
Sl. No.	Category	No. of cases	Amount
1.	Non-levy of penalty and fees	24	9.72
2.	Non-levy of stamp duty and registration fees	5	1.43
3.	Non-levy/short levy of auction money due to non-settlement/irregular settlement of sand <i>ghats</i>	5	0.89
4.	Non-levy of interest	9	2.59
5.	Non-initiation of certificate proceedings	4	0.37
6.	Other cases	19	17.63
<b>Total</b>		<b>66</b>	<b>32.63</b>

During the year 2001-02 the concerned department accepted under-assessment etc. of Rs. 0.83 crore involved in 8 cases all of which had been pointed out in audit in earlier years.

A few illustrative cases including Review on “**Mineral Receipts**” involving revenue effect of Rs. 21.40 crore are discussed in the following paragraphs:-

## **7.02 Mineral Receipts**

### **7.02.01 Introduction**

The activities of prospecting and mining of minerals are governed by Mines and Minerals (Regulation and Development) Act (MMRD Act), 1957 and the Mineral Concession Rules (MC Rules), 1960 framed thereunder. The mining of minor minerals is governed by the Bihar Minor Mineral Concession Rules (BMMC Rules), 1972 framed by the State Government.

Important minerals of Bihar are lime stone, pyrite, slate, mica (major minerals) and building stone, gravel, brick earth, sand etc. (minor minerals).

Mineral receipts comprise mainly royalty, dead rent, surface rent, application fee for lease / permit / prospecting licence, fines and penalties, interest for belated payment of dues, etc.

### **7.02.02 Organisational set up**

The regulation and development of mines and minerals, grant of mineral concessions, assessment, levy and collection of mining dues are administered by the Mines and Geology Department with the Commissioner-cum-Secretary as its head at the Government level. The Director of Mines is the head of the department, he is assisted by Additional Directors of Mines, Deputy Directors of Mines (DDMS) and District Mining Officers (DMOs) / Assistant Mining Officers (AMOs). The DMOs / AMOs in charge of District Mining Offices are responsible for assessment, levy and collection of royalty and other mining dues. The DDM incharge of a circle is the appellate authority and is delegated with powers of a certificate officer for recovery of mining dues.

### **7.02.03 Scope of audit**

With a view to evaluating adequacy and effectiveness of the system and procedure for levy and collection of royalty and to assess compliance to the provision of the MMRD Act, 1957, the MC Rules, 1960 and the BMMC Rules, 1972 framed thereunder, a review of the records pertaining to the years 1996-97 to 2000-2001 was conducted in 10<sup>1</sup> out of 24 District Mining Offices, 3<sup>2</sup> out of 6 circles and the Directorate of Mines during the period between October 2001 and May 2002. Certain important points relevant to the review detected during earlier audits have also been incorporated in the review.

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<sup>1</sup> Aurangabad, Bhojpur, Chapra, Darbhanga, Gaya, Muzaffarpur, Madhubani, Patna, Rohtas and Samastipur.

<sup>2</sup> Magadh, Muzaffarpur and Patna.

**7.02.04 Highlights**

- (i) In 5 Districts, 29 sand bearing areas with reserve *zama* of Rs. 53.18 lakh remained unsettled and resulted in loss of revenue to that extent  
(Paragraph 7.02.07)
- (ii) In 8 districts penalty of Rs. 3.00 crore was not imposed on works contracts for minerals illegally mined and used in execution of works.  
(Paragraph 7.02.09)
- (iii) In 4 districts, certified dues of Rs. 3.32 crore instead of Rs. 5.33 crore was reported to government resulting in under exhibition of the same to the extent of Rs. 2.01 crore.  
(Paragraph 7.02.11)
- (iv) In 9 districts, 136 brick kiln owners continued to operate their brick kilns without paying consolidated amount of royalty of Rs. 1.78 crore.  
(Paragraph 7.02.12)

**7.02.05 Trend of revenue**

Variation between budget estimates and actuals in respect of undivided Bihar during years from 1996-97 to 1999-2000 and that in respect of Bihar after formation of Jharkhand for the year 2000-2001 was noticed as under: -

**(Rupees in crore)**

Year	Budget estimates	Actuals	Short (-) Excess (+)	Percentage of variation
1996-97	825.00	820.28	(-) 4.72	(-) 0.57
1997-98	860.00	808.55	(-) 51.45	(-) 5.98
1998-99	1025.00	740.92	(-) 284.08	(-) 27.72
1999-2000	1050.00	707.56	(-) 342.44	(-) 32.61
2000-2001	350.00	409.92	(+) 59.92	(+) 17.00

The above table reveals wide variation between budget estimates and actuals particularly during 1998-99 and 1999-2000 with actuals always falling short of budget estimates. Revenue collections exhibit a decreasing trend during the five year period.

The reasons for variation between budget estimates and actual collection and decreasing trend in collection though called for (June 2002) from the Department/Government have not been furnished.

**7.02.06 Short levy of royalty**

The BMMC Rules, 1972 require every lessee to submit to the District Mining Officer every month, a true and correct return for minor minerals in the

prescribed form by the 15<sup>th</sup> of the following month. The District Mining Officer shall assess the amount of rent / royalty payable by the lessee after verification of the monthly returns furnished by the lessee. With a view to checking the evasion of royalty, the government vide circular issued in October 1986 prescribed physical verification and quarterly sectional measurements of mines / quarries for cross verification of the figures shown in the monthly returns. Further, in a meeting of departmental officers (May 1993) under the chairmanship of the Minister of Mines, it was decided that exhibition of quantity of less than 60,000 cubic feet (cft) of despatch of stone per annum by lessee implied concealment of despatch of materials as the mining business was unviable for smaller quantities.

It was noticed (March and May 2002) from scrutiny of monthly returns submitted by the lessees of stone quarries of Gaya and Sasaram that in the case of 72 lessees having total lease area of 228.97 acres, demands for dead rent/royalty of Rs. 28.66 lakh on the basis of monthly returns were raised for the period 1996-97 to 2000-01 without taking sectional measurements or carrying out any inspections. Assessment based on dead rent/royalty in those cases were finalised without taking into account the minimum quantity of despatch of minerals as decided in the meeting in May 1993. This resulted in possible short levy of royalty (minimum) amounting to Rs. 87.13 lakh.

#### **7.02.07            *Non- settlement of Sand bearing areas***

Under the BMMC Rules, 1972, the Collector of the district is empowered to settle sand (a minor mineral) by public auction to the highest bidder on annual basis. However, for isolated and far-flung areas of sand deposits (reserve *zama*) which cannot reasonably and conveniently be settled by public auction and are identified as such by the Collector and approved by the Commissioner, the competent officer may issue permits to any individual for extraction and removal of sand for a period not exceeding one year.

In 5<sup>3</sup> districts, it was noticed (between August 2000 and March 2002) that out of 167 sand bearing areas available for settlement, 29 areas with reserve *zama* of Rs. 53.18 lakh remained unsettled being in far flung areas during the year 1999-2000 and 2000-01. The Collector neither identified such areas nor approached the Commissioner for approval as required, so that arrangements to issue permits to individuals desirous of the same be made. This resulted in loss of Rs. 53.18 lakh

#### **7.02.08            *Non/short levy of interest on belated payment of royalty***

Under the BMMC Rules, 1972, 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.

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<sup>3</sup> *Chapra, Gaya, Muzaffarpur, Patna and Rohtas.*

In 6<sup>4</sup> District Mining offices, it was noticed (between May 2000 and May 2002) that 154 lessees / brick kiln owners defaulted in payment of mining dues of Rs. 42.23 lakh for various periods, between July 1997 and October 2001, ranging between 27 and 707 days, for which interest of Rs.6.91 lakh was leviable but not levied.

#### **7.02.09 Non-imposition of penalty for illegal Mining by work contractors**

Under the BMMC Rules, 1972 the work contractor shall purchase the mineral from the lessees / permit holders and the authorised dealers only to prevent evasion of royalty. The rule further provides that the work contractors shall submit to Works Department an affidavit in Form 'M' and particulars in Form 'N' indicating therein the source of purchase of minerals, price paid and quantity procured along with the bill. The Works Department, in turn, shall forward the photocopies of Form "M" and "N" to the Mining officer concerned for verification of the details. If the details furnished in Form "M" & "N" are found to be false, it shall be presumed that the mineral was obtained by illegal mining and the defaulter shall pay the price of the mineral equivalent to royalty.

The records of 8 District Mining offices revealed (between May 2000 and March 2002) that royalty of Rs. 3.00 crore deducted from the bills of contractors by Works Department were received by District Mining Officers without requisite affidavits in Form 'M' and particulars in Form 'N'. Non-submission of form "M" and "N" to the District Mining officer resulted in contravention of the above provision, rendering the contractor liable to pay penalty of Rs. 3.00 crore.

#### **7.02.10 Arrears of revenue**

As per details supplied by the Mines and Geology Department, the year wise break-up of arrears of revenue ending 31 March 2001 was as under:

<b>(Rupees in crore)</b>	
<b>Year</b>	<b>Amount</b>
Upto 1996-1997	26.15
1997-1998	5.73
1998-1999	6.64
1999-2000	8.47
2000-2001	12.07
<b>Total</b>	<b>59.06</b>

Out of above, Rs.3.83 crore is covered by certificate proceedings.

#### **(b) Delay in disposal of certificate cases**

As per instructions of the Board of Revenue, the Requiring Officer and the Certificate Officer are jointly responsible for the prompt disposal of certificate

<sup>4</sup> Aurangabad, Darbhanga, Madhubani, Patna, Samastipur & Sasaram.

cases and are bound to bring to each other's notice and if necessary, to the notice of the Collector, any undue delay. The Requiring Officer is primarily responsible for systematic application for certificates, the prompt disposal of objections and the early application for execution. He is also required to see that execution proceedings are progressing satisfactorily.

818 certificate cases, test checked with the records of 4<sup>5</sup> District Mining Offices under 2 Deputy Directors of Mines-cum-certificate officers as aforesaid, disclosed the age of pendency as shown hereunder:

(Rupees in crore)			
Sl.No.	Period	No. of cases	Amount
1.	Above 20 years	69	0.06
2.	Above 15 years upto 20 years	130	0.10
3.	Above 10 years & upto 15 years	447	1.58
4.	Above 5 years & upto 10 years	172	0.30
	<b>Total</b>	<b>818</b>	<b>2.04</b>

#### **7.02.11 Variations between figures of Register 9 and Register 10**

Under provisions of the Public Demand Recovery Act, certificate proceedings are initiated for realisation of arrears for which the Requiring Officer sends the proposal of certificate to the Certificate Officer and enters the details of such cases in Register 9. These are, in turn, entered in Register 10 maintained by the Certificate Officer for issue of certificates for realisation of dues.

Scrutiny of certified dues outstanding at the end of 31 March 2000 in respect of 4<sup>6</sup> District Mining offices as reported by Deputy Director of Mines vis-à-vis those worked out by audit on the basis of Register 9 and Register 10 revealed that as against actual certified dues of Rs. 5.33 crore involved in 3642 cases, the figure reported by the department to government was only Rs. 3.32 crore involved in 3126 cases resulting in variation in certified dues to the extent of Rs. 2.01 crore.

#### **7.02.12 Non-stoppage of illegal mining by chronic defaulters**

Under the provisions of the BMMC Rules, 1972 and notification of the Government issued thereunder, every brick kiln owner / brick earth remover shall pay the consolidated royalty in one instalment before permit is issued to him. In case of default, the brick owner shall not be allowed to carry on the business and for non-payment of dues in time, certificate cases should be instituted against him.

In course of test check of Register 9 and 10 in respect of 9<sup>7</sup> District Mining Offices, it was noticed (between March and May 2002) that against 136 brick

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<sup>5</sup> Bhojpur, Gaya, Patna and Rohtas.

<sup>6</sup> Darbhanga, Muzaffarpur, Madhubani and Samastipur.

<sup>7</sup> Bhojpur, Chapra, Darbhanga, Gaya, Madhubani, Muzaffarpur, Patna, Rohtas and Samastipur.

kiln owners, 616 certificate cases of Rs. 1.78 crore had been instituted during the period between 1981-82 and 2000-01 for dues pertaining to various years between 1976-77 and 1999-2000. Although the brick kiln owners continued to engage in repeated illegal mining of brick earth, and certificate cases were instituted repeatedly (3 to 16 times) against them, neither was the operation of brick kilns stopped nor recovery of dues effected.

**7.02.13 (a) Inordinate delay in initiation of certificate proceedings**

Under the MMRD Act, 1957 read with the M.C. Rules 1960 and the BMMC Rules, 1972, royalty, dead rent and other mining dues are required to be paid within a prescribed period. In the case of non-payment of the consolidated royalty by the brick kiln owner, he shall not be allowed to carry on the business and the competent officer shall stop such business. As per the instructions of the government issued in October 1987, dues remaining unpaid by brick kiln owners were to be certified promptly.

Test check of the records of 5<sup>8</sup> District Mining Offices, revealed that in 373 cases involving mining dues of Rs.86.58 lakh pertaining to various years between 1974-75 and 2000-01, certificate proceedings were instituted between 1994-95 and 2000-01, the delay ranging between 1 to 20 years.

**(b) Non-institution of certificate proceedings**

A review of demand, collection and balance register and register of requisitions for certificate proceedings relating to 5<sup>9</sup> Districts Mining Offices revealed that in 1074 cases involving mining dues of Rs.3.03 crore pertaining to various periods between April 1995 and March 2001, certificate proceedings were not initiated by the District Mining Officers.

**7.02.14 Pending Certificate cases**

**(a) Lack of co-ordination between Requiring Officer (RO) and Certificate Officer (CO)**

In order to effect recovery of dues from defaulters, mining laws provide for recovery thereof as arrears of land revenue, under the PDR Act. According to instructions of the Board of Revenue, the RO and CO are jointly responsible for the timely disposal of certificate cases and for bringing to each others notice and if necessary, to the notice of the Collector, cases of undue delay. The RO is primarily responsible for systematic application for certificates, the prompt disposal of objections if referred to him, the return of the files after such disposal and early application for execution, giving details of the property against which the certificate is to be enforced. He is also responsible to see that the execution proceedings are progressing satisfactorily.

<sup>8</sup> Darbhanga, Madhubani, Muzaffarpur, Patna and Samastipur.

<sup>9</sup> Gaya, Madhubani, Patna, Rohtas, Samastipur.

A test check of pending certificate cases relating to 4<sup>10</sup> district mining offices and 2<sup>11</sup> Deputy Directors of mines disclosed that the concept of the joint responsibility of the Requiring Officer (RO) and the Certificate Officer (CO) for disposal of certificate cases emphasised by the Board of Revenue was not adhered to and delays in execution was seldom brought to the notice of the CO or the Collector by the ROs. Comments and information called for by CO was not submitted by ROs in a number of cases.

The age and nature of pendency and some of the reasons for which the certificate cases have been outstanding for disposal have been dealt with in succeeding sub-paragraphs.

**(b) *Lack of regular pursuance and follow up action***

Test check of Register 10 of DDMs cum COs of Gaya and Muzaffarpur alongwith case records disclosed that in the process of execution of 110 certificate cases covering certified dues of Rs.39.20 lakh, distress warrants/arrest warrants were issued (between February 1981 and March 2001) at least 3 to 11 times in the same cases but did not materialise due to lack of co-operation from Police Department and no further follow up action was taken. The non-execution of distress warrants/arrest warrants also indicated lack of co-ordination with the Police department, with matter not being taken up at higher level.

**(c) *Irregular remand of certificate cases***

Under the PDR Act, 1993, the CO shall hear the petition, take evidence (if necessary) and determine whether the certificate debtor is liable for the whole or any part of the amount for which the certificate was signed, and may set aside, modify or vary the certificate accordingly. There is no provision to remand the certificate cases to the RO under the PDR Act. However, there is a general practice of remanding cases for re-examination by the RO.

During the course of test check of Register 9 in respect of 5 District<sup>12</sup> Mining offices, and register of respective COs it was noticed (between March 2001 and May 2002) that 79 certificate cases involving an amount of Rs. 13.17 lakh were remanded (between August 1982 and August 1999) to ROs concerned but follow up actions taken in respect of these cases were not intimated to audit. However, the dues of Rs. 13.17 lakh remained un-recovered.

**(d) *Non-materialisation of execution of warrants***

During the course of test check of outstanding certificate cases in respect of Muzaffarpur district, it was noticed that in 50 cases involving Rs. 14.12 lakh instituted between 1976-77 and 1991-92, warrants could not be executed for want of present address of the Certificate Debtors. (C.Drs.)

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<sup>10</sup> Bhojpur, Gaya, Patna and Rohtas.

<sup>11</sup> D.D.M. Patna and Gaya.

<sup>12</sup> Darbhanga, Gaya, Madhubani, Muzaffarpur and Samastipur.



### **7.02.15 Internal Control and Monitoring**

In order to regulate the activities of a department in accordance with the provisions of Acts and Rules and the appropriate instructions, and in order to monitor levy, collection and demand of revenue, existence of an internal control mechanism within the department is a must.

From the above findings, it is observed that the Mines and Geology Department does not have an effective internal control mechanism. On being enquired (February 2002) about internal control and monitoring in the Directorate of Mines (Bihar), it was stated (March 2002) that the department controls to regulate and monitor the process of collection of royalty etc. by giving directions to concerned Mining Officers. The reply did not indicate existence of an effective internal control and monitoring mechanism.

### **7.02.16 Recommendations**

Government may examine and consider:

- (i) creation of a specific and definite mechanism for internal control to ensure appropriate and timely action for levy, collection and demand of revenue;
- (ii) creation of a mechanism for surprise checking of illegal mining and concealment of production;
- (iii) making sectional measurement of quarries / mines compulsory in order to check evasion of royalty;
- (iv) taking effective measures in co-ordination with the Police department for recovery of pending certificate dues.

### **7.03 Non/short levy of penalty**

Under the Bihar Minor Mineral Concession (BMMC) Rules, 1972 and notification dated 27 March 1992 issued thereunder, every brick kiln owner/brick earth remover shall pay consolidated royalty, based on categories of the brick kilns, before issue of permit. Further, under rule 40(8) in case of any person who removes minor mineral without valid lease/permit, he shall be liable to pay the price thereof and the Government may also recover rent, royalty or taxes, as the case may be for the period during which the land was occupied by him without any lawful authority.

In 7 District Mining Offices<sup>13</sup>, it was noticed (between March 2001 and February 2002) that 2338 brick kilns (brick season between 1996-97 and 2000-01) were operated without payment of consolidated royalty of Rs. 5.40 crore and without valid permit. Out of these, the department raised demand in

<sup>13</sup> Chapra, Darbhanga, Patna, Bhojpur, Aurangabad, Muzaffarpur and Sasaram

563 cases for penalty of Rs. 50.39 lakh but without recovering price of mineral. This resulted in non/short levy of royalty amounting to Rs. 4.90 crore.

On these being pointed out (between March 2001 and February 2002), the Assistant Mining Officer (AMO), Sasaram stated (September 2001) that the matter would be referred to the Government for guidelines.

The cases were reported to the Government (May 2002); their replies have not been received (November 2002).

#### ***7.04 Loss of revenue due to non execution of deeds of settlement***

Under the BMMC Rules, 1972, settlement of sand is made for one calendar year by the Collector of a district by public auction, and a deed of settlement is to be executed on payment of Stamp duty as prescribed in the Indian Stamp Act, 1899.

In 3 District Mining Offices (Aurangabad, Bhojpur and Patna), 84 sand bearing areas were settled at Rs.21.19 crore for the years 1996 to 2001 without executing proper deeds of settlement as required under the Indian Stamp Act, 1899. Thus, the Government had to forgo Rs. 1.33 crore on account of stamp duty and surcharge leviable.

On this being pointed out (between August 2001 and February 2002), the AMO, Patna stated (December 2001) that as per notification issued in November 1994, registration of such agreement was optional, hence there was no loss. The contention is not tenable as only registration is optional but the document is required to be executed in all cases. Final reply is awaited (November 2002).

The cases were reported to the Government (May 2002); their reply has not been received (November 2002).