

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. No.3289 of 2025

**EASTERN CO-OPERATIVE HOUSING SOCIETY LTD. AND
ANOTHER**

-VERSUS-

STATE OF WEST BENGAL

For the petitioners : Mr. Kamal Krishna Pathak, Adv.,
Mr. Souvik Maji, Adv.

For the State : Mr. Ramashis Mukherjee, Adv.,
Mr. Arnab Sau, Adv.

Hearing concluded on : 28.07.2026

Judgment on : 05.08.2026

Kausik Chanda, J.:-

The petitioners challenge the order dated December 24, 2024 passed by the learned Additional Sessions Judge, 10th Court at Alipore, whereby the learned Additional Sessions Judge affirmed the order dated September 5, 2019 passed by the learned Chief Judicial Magistrate, Alipore.

2. It appears that Complaint Case No. 7016 of 2013 was instituted by an Inspector appointed under the Minimum Wages Act, 1948, under Section 20(2) of the said Act, before the learned Chief Judicial Magistrate, Alipore. The complaint alleged, inter alia, that the petitioner Co-operative Housing Society had failed to pay minimum wages, as prescribed under Labour Department Notification No. 439-MW/2W-11-2010 dated September 21, 2011, to one Anil Das, who was employed as a lift operator in the said Co-operative Housing Society during the relevant period.

3. In the said proceeding, the petitioners filed an application challenging the maintainability of the complaint on the ground that a Housing Co-operative Society is not an establishment to which the provisions of the Minimum Wages Act, 1948 are applicable. By order dated September 5, 2019, the learned Chief Judicial Magistrate rejected the said objection and held that the proceeding was maintainable. Aggrieved thereby, the petitioners preferred a revision before the learned Additional Sessions Judge, 10th Court at Alipore. By order dated

December 24, 2024, the learned Additional Sessions Judge affirmed the order passed by the learned Magistrate.

4. Mr. Pathak, learned advocate appearing on behalf of the petitioners, submits that both the Courts below failed to appreciate that the provisions of the Minimum Wages Act, 1948 have not been extended to Housing Co-operative Societies. In support of his contention, he has relied upon a notification dated June 22, 2026 issued by the Labour Commissioner, Government of West Bengal, to demonstrate that although Consumer Co-operative Societies and Primary Agricultural Co-operative Societies/Marketing Societies have been brought within the ambit of the Act, no notification has been issued extending the applicability of the Minimum Wages Act, 1948 to Housing Co-operative Societies.

5. Learned counsel appearing for the State, however, submits that although no notification has specifically extended the provisions of the Act to Housing Co-operative Societies, employees engaged by such societies are nevertheless entitled to minimum wages if the nature of their employment falls within any of the scheduled employments notified under the Act.

6. In support of the said contention, the learned advocate for the State has relied upon Circular No.04/Stat/2RW/32/94/LCS/JLC. dated January 5, 2016 issued by the Labour Commissioner, Government of West Bengal, prescribing the minimum rates of wages in the employment of "Construction or Maintenance of Roads or in Building

Operations." It is submitted that the said circular classifies a lift operator as a semi-skilled worker. Consequently, according to the State, a lift operator employed in a Housing Co-operative Society must be regarded as an employee engaged in "Construction or Maintenance of Roads or in Building Operations" within the meaning of Entry 7 of Part I of the Schedule to the Minimum Wages Act, 1948.

7. The scheme of the Minimum Wages Act, 1948 contemplates the fixation of minimum rates of wages in respect of specified employments.

Section 2(g) defines "scheduled employment" as follows:

"2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context, —

(g) "scheduled employment" means an employment specified in the Schedule, or any process or branch of work forming part of such employment;"

8. Section 2(i) of the said Act defines "employee" as follows:

"(i) "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out-worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union."

9. Section 27 of the Act empowers the appropriate Government to add employments to the Schedule. The said provision reads as follows:

“27. Power of State Government to add to Schedule.—The appropriate Government, after giving by notification in the Official Gazette not less than three months' notice of its intention so to do, may, by like notification, add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the [State] be deemed to be amended accordingly.”

10. It is also necessary to reproduce the Schedule to the Minimum Wages Act, 1948, which reads as follows:

“THE SCHEDULE
[See sections 2(g) and 27]

PART I

1. Employment in any woollen carpet making or shawl weaving establishment.
2. Employment in any rice mill, flour mill or *dal* mill.
3. Employment in any tobacco (including *bidi* making) manufactory.
4. Employment in any plantation, that is to say, any estate which is maintained for the purpose of growing cinchona, rubber, tea or coffee.
5. Employment in any oil mill.
6. Employment under any local authority.
7. Employment on the construction or maintenance of roads or in building operations.
8. Employment in stone breaking or stone crushing.
9. Employment in any lac manufactory.
10. Employment in any mica works.
11. Employment in public motor transport.
12. Employment in tanneries and leather manufactory.
- Employment in gypsum mines.
- Employment in barytes mines.
- Employment in bauxite mines.
- Employment in manganese mines.

Employment in the maintenance of buildings and employment in the construction and maintenance of runways.

Employment in china clay mines.

Employment in kyanite mines.

Employment in copper mines.

Employment in clay mines covered under the Mines Act, 1952 (35 of 1952)

Employment in magnesite mines covered under the Mines Act, 1952 (35 of 1952).

Employment in white clay mines.

Employment in stone mines.

Employment in steatite (Including the mines producing seapstone and Tale)

Employment in ochre mines.

Employment in asbestos mines.

Employment in fire clay mines.

Employment in chromite mines.

Employment in quartzite mines.

Employment in quartz mines.

Employment in silica mines.

Employment in graphite mines.

Employment in felspar mines.

Employment in laterite mines.

Employment in dolomite mines.

Employment in redoxide mines.

Employment in wolfram mines.

Employment in iron ore mines.

Employment in granite mines.

Employment in rock phosphate mines.

Employment in hematite mines.

Employment in loading and unloading in (i) Railways, goods sheds, (ii) Docks and Ports.

Employment in marble and calcite mines.

Employment in Ashpit cleaning in Railways.

Employment in uranium mines.

Employment in lignite mines.

Employment in gravel mines.

Employment in State mines.

Employment in laying of underground cables, electric lines, water supply lines and sewerage pipe lines.

Employment of Sweeping and Cleaning excluding activities prohibited under the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

PART II

1. Employment in agriculture, that is to say, in any form of farming, including the cultivation and tillage of the soil, dairy farming, the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, the raising of live-stock, bees or poultry, and any practice performed by a farmer on a farm as incidental to or in conjunction with farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation to market of farm produce)."

11. A conjoint reading of the aforesaid provisions makes it abundantly clear that the Minimum Wages Act, 1948 applies only to scheduled employments specified in the Schedule to the Act or to such additional employments as may be notified by the appropriate Government in exercise of its powers under Section 27 of the Act.

12. It is not in dispute before this Court that a Housing Co-operative Society does not find place in the Schedule to the Act. It is equally undisputed that no notification has been issued by the State Government under Section 27 of the Act bringing Housing Co-operative Societies within the ambit of the Minimum Wages Act, 1948.

13. The State, however, contends that a lift operator employed in a Housing Co-operative Society must be treated as being engaged in "building operations" within the meaning of Entry 7 of Part I of the Schedule.

14. It appears that both the Courts below accepted the aforesaid contention and consequently held that the complaint was maintainable. This Court, however, is unable to subscribe to the said view.

15. It must be noticed that Sections 3, 4 and 5 of the Minimum Wages Act merely empower the appropriate Government to fix or revise the minimum rates of wages in respect of employments to which the Act already applies. The Circular dated January 5, 2016 relied upon by the State has been issued in exercise of those powers for the limited purpose of revising the rates of minimum wages. Such a circular cannot enlarge the scope of the Act or extend its applicability to employments which do not otherwise fall within the ambit of Section 27 and the Schedule.

16. The applicability of the Act must necessarily be determined with reference to Section 2(g), Section 27 and the Schedule appended to the Act. Unless an employment is included in the Schedule or is brought within the purview of the Act by a notification issued under Section 27, the provisions of the Act cannot be extended merely by prescribing or revising rates of wages under Sections 3, 4 and 5.

17. The principal question, therefore, that falls for determination is whether the employment of a lift operator can be brought within the scope of Entry 7 of Part I of the Schedule, namely, "Employment on the construction or maintenance of roads or in building operations."

18. A plain reading of Entry 7 indicates that it applies only to employment:

(a) on the construction or maintenance of roads; or

(b) in building operations.

19. The expression "building operations" has not been defined either in the Minimum Wages Act, 1948 or in the Rules framed thereunder.

20. Mr. Pathak has relied upon the definitions of "building operation" occurring in various State enactments, namely, the West Bengal Panchayat Act, 1973, the West Bengal Town and Country (Planning and Development) Act, 1979 and the West Bengal Heritage Commission Act, 2001, to contend that the expression invariably refers to activities connected with the construction, erection, alteration or structural development of a building. It is submitted that the duties performed by a lift operator bear no nexus with the construction of a building and, therefore, cannot fall within Entry 7 of the Schedule.

21. Section 2(3) of the West Bengal Town and Country (Planning and Development) Act, 1979 defines "building operation" as follows:

"2. In this Act, unless there is anything repugnant in the subject or context, —

.....

(3) "building operations" includes—

(a) erection or re-erection of a building or any part of it,

(b) roofing or re-roofing a building or any part of a building or an open space,

(c) any material alteration or enlargement of any building,

(d) any alteration of a building as is likely to affect an alteration of its drainage or sanitary arrangements or materially affect its structural stability, and

(e) the construction of a door opening on any street or land not belonging to the owner of a building;"

22. Similarly, Section 2(b) of the West Bengal Heritage Commission Act, 2001 defines "building operation" as follows:

"2.

(b) 'building operation' includes—

(i) erection or re-erection of a building or any part thereof;

(ii) roofing or re-roofing of a building or any part thereof;

(iii) any material alteration or enlargement of a building;

(iv) any structural alteration of a building; and

(v) such other operation as may be prescribed."

23. The definitions contained in the aforesaid enactments consistently indicate that the expression "building operation" relates to activities concerning the construction, erection, alteration, addition or structural modification of a building.

24. The expression 'building operations' is not defined under the Minimum Wages Act. Although the definitions occurring in the West Bengal Town and Country (Planning and Development) Act, 1979 and the West Bengal Heritage Commission Act, 2001 are not controlling, those enactments indicate the ordinary legal connotation of the expression as referring to activities relating to the construction, erection, alteration or structural modification of a building. They may be relied

upon only as persuasive aids and not for importing their statutory definitions into the Minimum Wages Act.

25. The expression "building operations" naturally refers to construction-related operations. A lift operator is engaged in operating a facility in an already completed building, not in carrying out any building operation.

26. Although a lift may constitute an integral component of a building, the operation of a lift cannot, by any reasonable construction, be regarded as an activity relating to the construction of the building itself. The duties discharged by a lift operator commence only after the building has been completed and the lift has been installed and commissioned. Such employment cannot, therefore, be brought within the ambit of "building operations" as contemplated under Entry 7 of the Schedule to the Minimum Wages Act, 1948.

27. In the absence of any notification issued under Section 27 of the Act extending its applicability either to Housing Co-operative Societies or to the employment of lift operators, this Court is of the considered opinion that the complaint instituted under the Minimum Wages Act, 1948 was not maintainable.

28. Accordingly, the order dated September 5, 2019 passed by the learned Chief Judicial Magistrate, Alipore, as affirmed by the order dated December 24, 2024 passed by the learned Additional Sessions Judge, 10th Court at Alipore, is set aside.

29. Consequently, Complaint Case No. 7016 of 2013 instituted under the Minimum Wages Act, 1948 stands quashed.

30. CRR 3289 of 2025 is, accordingly, allowed.

31. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)