IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.5007 OF 2019
IN/WITH
WRIT PETITION NO.2143 OF 2015

Asht Bhuja Nath S/o
Mrityunjay Nath Tripathi APPLICANT

VERSUS

State of Maharashtra & ors RESPONDENTS

Mr S. P. Brahme, Advocate h/f Mr B.K.Patil, Advocate for applicant;
Mr P. S. Patil, A.G.P. for respondents/State

CORAM : PRASANNA B. VARALE &
R.G. AVACHAT, JJ.

DATED : 27th JUNE, 2019

ORAL ORDER:

At the outset, Mr Brahme, learned Counsel appearing for the applicant / petitioner submitted that though the petitioner sought for leave to add Advocate General of State of Maharashtra as party respondent No.3, on an impression that the petitioner is challenging the Rules, more particularly Rule-13, 3(a) and (b) and 3 to 6

of the Maharashtra Fire Prevention and Life Safety Measures Rules, 2009, the Advocate General would be a necessary party, however, by inviting our attention to the judgment delivered by the Division Bench of this Court at Nagpur in the matter of **Maha Seedmen Association, a Society/Trust registered under the Societies Registration Act and the Bombay Public Trusts Act, having its Regd. office at Ishika Complex, Near Madhuban Hotel, Jalna through its Authorized Representative Mr. Anish Navneetlal Mehta & others Vs. Union of India and others**, reported in **(2018) 3 A.I.R. Bom. R. 628**, he submits that while dealing with the issue of challenge to Rule 6 (b) of the Seeds Rules, 1968, the Division Bench answered the question; whether the requirement of Order XXVII-A of the Code of Civil Procedure is so mandatory that the Court becomes incompetent to grant declaration of constitutional invalidity of such provision in the absence of such notice being issued to the Attorney General of India or

the Advocate General of the State, as the case may?, in the negative.

2. Our attention was also invited to the relevant observations of the Division Bench in Para-71, which read thus:

> "71. In view of the aforesaid discussion, the challenge in the present petition being to the validity of Rule 6(b) of the Seeds Rules, framed in exercise of the power conferred by the provision of Section 25(2)(f) of the Seeds Act, which is the Central legislation, it is not necessary to issue notice to the Attorney General for India to declare the provision as unconstitutional or invalid. The authority, which has issued the Seeds Rules in exercise of its statutory power, is the party respondent in this petition, apart from the Central Government, through its concerned Department, to whom a notice has already been issued and the appearance is put in by the Assistant Solicitor General of India and the

Assistant Government Pleader, who has been assigned this matter by the Government Pleader in the High Court."

3. Mr Brahme, learned Counsel, thus, submits that in view of this legal position, he be permitted to delete Advocate General from the array of respondents. In view of the submission of Mr Brahme, learned Counsel, oral prayer of deletion of Advocate General is allowed.

4. By way of civil application, the applicant prays for early hearing of the petition on the ground that the pendency of the petition is putting the petitioner in huge financial losses, as the petitioner has hired the premises and is required to pay monthly rent, electricity charges and salary of his staff.

5. Considering the submission of Mr Brahme, learned Counsel for the applicant and for the reasons stated in the application, the application is allowed.

6. Writ Petition No. 2143 of 2015 be fixed for final disposal/hearing and be shown in the cause list of final hearing matters in the week commencing from 29th July, 2019.

[R.G. AVACHAT, J.] **[PRASANNA B. VARALE,J.]**

Tupe