

\$~63 & 64.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9443/2015

%

SHIVAJI ANAND

Judgment dated 14th October, 2015

..... Petitioner

Through : Mr.K.K. Sharma, Sr. Adv. with Mr.D.K. Sharma and Mr.Ankur Sharma, Advs.

versus

LIEUTENANT GOVERNOR OF DELHI & ORS Respondents

Through : Ms.Mahu Kalra, Adv. for Mr.Peeyoosh Kalra, ASC (Civil) GNCTD, for respondent no.1.

Mr.Rajiv Bansal, Ms.Arpita and Mr.Anukrit Gupta, Advs. for respondent no.2.

Mr.Vikas Mahajan, CGSC and Mr.Rohan Gupta, Adv. for respondent no.3/DoPT.

+ W.P.(C) 8285/2015

BHARAT BHUSHAN BHASIN

..... Petitioner

Through : Mr.Kirti Uppal, Sr. Adv. with Ms.Wamika Trehan, Mr.H.S. Kohli and Mr.Harvinder Singh, Advs.

versus

LT. GOVERNOR & ANR.

..... Respondents

Through : Mr.Anuj Aggarwal, Adv. for respondent no.1.

Mr.Rajiv Bansal, Ms.Arpita and Mr.Anukrit Gupta, Advs. for respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Arguments in both these matters have been addressed by learned counsel for the parties at the admission stage itself.
2. With the consent of counsel for both the parties, present writ petitions are

taken up for hearing and they are being disposed of by a common order.

3. By the present writ petitions, the petitioners seek an appropriate writ in the nature of mandamus directing the respondents to appoint the petitioner(s) against the vacant posts of Delhi Higher Judicial Services (DHJS), to be selected from amongst the Bar, as were at the time of completion of selection process, commenced vide notification dated 28.12.2013.
4. For the sake of convenience, facts in the case of W.P.(C) 8285/2015 are being noticed.
5. As per the petitions, the petitioners are practising Advocates. On 28.12.2013, an advertisement was published by respondent no.2 inviting applications from practising Advocates for filling up 14 posts (10 posts in the General category, 01 posts in the Scheduled Caste category and 03 posts in Scheduled Tribes category) in Delhi Higher Judicial Service under direct recruitment from the Bar. Preliminary examination was held on 6.4.2014. Both the petitioners qualified in the preliminary examinations and, thus, became eligible for the written examination (Mains). In the month of April, 2014. Based on a decision rendered by a Division Bench of this Court in W.P.(C) 983/2014, titled as ***Nishant S. Diwan v. High Court of Delhi through Registrar General & Anr.***, one post of General category was reserved for Physically Handicapped candidate, thereby reducing the total number of posts advertised for General category from 10 to 09. A written examination (Mains) was held on 9.8.2014 wherein both the petitioners were declared successful. The petitioner in W.P.(C)8285/2015 secured sixth position in General category while the petitioner in W.P.(C)9443/2015 secured eighth position. The petitioners appeared before the interview board constituted by respondent no.2 for screening of the candidates for selection to the post of District

Judge against vacancies as on 19.5.2015.

6. It is the case of the petitioners that on 14.7.2015 an affidavit was filed by respondent no.2 in Civil Appeal No.1867/2006, titled as **Malik Mazhar Sultan v. U.P. Public Service Commission & Ors.**, pending before the Supreme Court of India, deposing that respondents in the selection process of District Judges were filling up 14 vacancies. The final result of DHJS was declared on 28.7.2015 wherein the name of petitioner in W.P.(C)8285/2015 secured 11th rank while the petitioner in W.P.(C)9443/2015 secured 13th rank. Nine candidates for General category were selected in the months of July/August, 2015. Since the names of petitioners did not figure in the first nine candidates, they made their representations to respondent no.2 for considering their candidature for the post of District Judges in the aforestated selection process. Since no response to the aforesaid representations have been received, the petitioners have been forced to knock the doors of this Court for justice.
7. Mr.Sharma and Mr.Uppal, learned senior Advocates appearing on behalf of the petitioners, have relied upon the order passed by the Supreme Court in the case of **Malik Mazhar Sultan** (supra), more particularly para 7, in support of their submissions with regard to fixing up of a detailed calendar with respect to conducting of examinations twice a year and filling up vacancies. Para 7 of the order reads as under:

“7. For filling up of vacancies in the cadre of District Judges, accepting the proposal to which none has objected, except in the manner hereinafter noticed, we direct as under :-

A. For filling of vacancies in the cadre of District Judge in respect of

(a) Twenty five per cent vacancies to be filled by direct recruitment from the Bar; and

(b) Twenty five per cent by promotion through limited competitive examination of Civil Judges (Senior Division) not having less than five years of qualifying service.

S.NO.	Description	Date
1.	Number of vacancies to be notified by the High Court. Vacancies to be calculated including a) existing vacancies b) future vacancies that may arise within one year due to retirement, c) future vacancies that may arise due to elevation to the High Court, death or otherwise, say ten per cent of the number of posts, d) vacancies arising due to deputation of judicial officers to other department may be considered as temporary vacancy.	31st March
2.	Advertisement inviting applications from eligible candidates	15 th April
3.	Last date for receipt of application	30 th April
4.	Publication of list of eligible applicants List may be put on the website	15 th May
5.	Despatch/issue of admit cards to the eligible applicants	16 th May to 15 th June
6.	Written Examination Written examination may be a) objective questions with multiple choice which can be scrutinized by the computer; and b) subjective/narrative	30 th June
7.	Declaration of results of written examination a) Result may be	16 th August

	put on the website and also published in the newspaper b) The ratio of 1:3 of the available vacancies to the successful candidates be maintained	
8.	Viva Voce	1 st to 7 th September
9.	Declaration of final select list and communication to the appointing authority a) Result may be put on the website and also published in the newspaper b) Select list be published in order of merit and should be double the number of vacancies notified c) Select list shall be valid till the next select list is published	15 th September
10.	Issue of appointment letter by the competent authority for all existing vacant posts as on date	30 th September
11.	Last date for joining	31 st October

B.

C.

D.....

14. The select list prepared for all categories of officials shall be valid till the next select list is Published.

15. We further direct that ten percent of unforeseen vacancies would be in respect of sanctioned posts and not vacancies occurring in a particular year.”

8. It is submitted that as per the directions issued in the case of *Malik Mazar Sultan* (supra) all the existing/anticipating vacancies are to be filled up irrespective of the fact whether those vacancies have been advertised or not until the time the process comes to an end. It is, thus, contended that since the vacancies are available, irrespective of the fact that only 14

vacancies were advertised, all the vacancies should be filled up.

9. Mr.Bansal, learned counsel appearing on behalf of respondent no.2, submits that the question, sought to be raised by the petitioners herein, is no longer *res integra*. After the directions were passed by the Apex Court in the case of **Malik Mazar Sultan** (supra), a batch of writ petitions, being W.P.(C)Nos.1435/2011, 1701/2011, 1702/2011, 2156/2011 & 2317/2011, were filed in the Delhi High Court. The said writ petitions were placed before the Full Bench of Delhi High Court. Based on the decision rendered by the Three Judges Bench of the Supreme Court of India in the case of **Rakhi Ray And Others v. The High Court of Delhi & Others**, Civil Appeals No.1134-1135/2010, all the aforesaid writ petitions have been dismissed by the Full Bench of the Delhi High Court.
10. Mr.Bansal has placed reliance on **Rakhi Ray And Others** (supra), a decision rendered by a Three Judges Bench of the Supreme Court of India, more particularly paras 9 to 15, 25 and 26, in support of his submission that the said controversy has been put to rest in view of the authoritative pronouncement by the Supreme Court of India to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16 (i) of the Constitution of India and further any appointment made would be a nullity and inexecutable in the eyes of law.
11. Paras 9 to 15, 25 and 26 read as under:

“9. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of

vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide Union of India & Ors. v. Ishwar Singh Khatri & Ors. (1992) Supp 3 SCC 84; Gujarat State Deputy Executive Engineers' Association v. State of Gujarat & Ors. (1994) Supp 2 SCC 591; State of Bihar & Ors. v. The Secretariat Assistant S.E. Union 1986 & Ors AIR 1994 SC 736; Prem Singh & Ors. v. Haryana State Electricity Board & Ors. (1996) 4 SCC 319; and Ashok Kumar & Ors. v. Chairman, Banking Service Recruitment Board & Ors. AIR 1996 SC 976).

10. In Surinder Singh & Ors. v. State of Punjab & Ors. AIR 1998 SC 18, this Court held as under:

"A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointment, there is a danger that the State Government may resort to the device of not holding an examination for years together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even

from service.....Exercise of such power has to be tested on the touch-stone of reasonableness....It is not a matter of course that the authority can fill up more posts than advertised."

(Emphasis added)

11. Similar view has been re-iterated in Madan Lal v. State of J & K & Ors. AIR 1995 SC 1088; Kamlesh Kumar Sharma v. Yogesh Kumar Gupta & Ors. AIR 1998 SC 1021; Sri Kant Tripathi v. State of U.P. & Ors. (2001) 10 SCC 237; State of J & K v. Sanjeev Kumar & Ors. (2005) 4 SCC 148; State of U.P. v. Raj Kumar Sharma & Ors. (2006) 3 SCC 330; and Ram Avtar Patwari & Ors. v. State of Haryana & Ors. AIR 2007 SC 3242).

12. In State of Punjab v. Raghbir Chand Sharma & Ors. AIR 2001 SC 2900, this Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that post can be filled up offering the appointment to the next candidate in the select list observing as under:-

"With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select list prepared, the panel ceased to exist and has outlived its utility and at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

13. In Mukul Saikia & Ors. v. State of Assam & Ors. AIR 2009 SC 747, this Court dealt with a similar issue and held that "if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised". The Select List "got exhausted when all the 27 posts were filled". Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The "currency of Select List had expired as soon as the number of posts advertised are filled up, therefore, the appointments beyond the number of posts advertised would amount

to filling up future vacancies" and said course is impermissible in law.

14. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, process of selection comes to an end. Waiting list etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more.

15. In the instant case, as 13 vacancies of the General Category had been advertised and filled up, the selection process so far as the General Category candidates is concerned, stood exhausted and the unexhausted select list is meant only to be consigned to record room.

25. In view of above, we do not find any force in the submissions that the High Court could have filled vacancies over and above the vacancies advertised on 19.5.2007, as per the directions issued by this Court in Malik Mazhar Sultan's case (supra). More so, no explanation could be furnished by Shri Ranjit Kumar, learned senior counsel for the appellants as to why the appellants could not challenge the advertisement itself, if it was not in conformity with the directions issued by this court in the said case.

26. It has further been submitted on behalf of the appellants that the Delhi High Court vide its judgment and order dated 3.10.2008 had issued directions to offer appointment to two persons implementing the said judgment in Malik Mazhar Sultan's case (supra) whose names appeared in select list at SI. Nos. 14 and 15, and, as the High Court had implemented the said directions, the appellants could not be treated with such hostile discrimination. Undoubtedly, the directions had been issued to fill up two vacancies over and above the vacancies notified. However, that part of the judgment is not under challenge before us. In such a fact situation, it is neither desirable nor permissible in law to make any comment on that. A

person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment.”

12. Mr.Bansal has also raised another objection with regard to the maintainability of these writ petitions on the ground that the advertisement in question itself has not been challenged by either of the two petitioners. Mr.Bansal contends that the petitioners took a calculative risk and finding themselves not selected amongst the first nine candidates, they have chosen to file the present writ petitions.
13. Mr.Sharma and Mr.Uppal, learned senior counsel for the petitioners, submit to the contrary. It is submitted that the petitioners were not in the knowledge of the number of vacancies, which were in existence at the time when the vacancies were advertised, and, thus, they could not have challenged the advertisement till such time their rights were adversely affected.
14. We have heard learned counsel for the parties and considered their rival submissions. We may note that similar issues had come up for consideration before this Court, *inter alia*, in the cases of ***Salil Maheshwari v. The High Court of Delhi and Others***, W.P.(C)3426/2013; ***Nidhi Mutreja v. Registrar General, Delhi High Court & Others***, W.P.(C)3392/2013; ***Maneesh Kumar Shukla v. The High Court of Delhi & Ors.***, W.P.(C) 3428/2013; ***Jyoti Grover v. The High Court of Delhi And Ors***, W.P.(C) 3737/2013; ***Eti Solanki v. The High Court of Delhi & Ors.***, W.P.(C)4152/2013; and ***Legha Deepak Ranjit Singh v. The High***

Court of Delhi And Ors., W.P.(C)6263/2013, wherein identical questions were raised and the said writ petitions were rejected.

15. We may also note that when a batch of writ petitions including W.P.(C)No.1435/2011, titled as *Sanjeet Singh* (supra), the following, amongst other grounds, were raised:

“8. Certain General Category candidates who found themselves at the merit position 14, 15 and 16 and further down the list filed various writ petitions in this Court which were decided on 03.10.2008. Inter alia, it was urged by the writ petitioners therein that 13 anticipated vacancies were not taken into account by the Delhi High Court and this was in breach of the mandate issued by the Supreme Court in the decision reported as *Malik Mazhar Sultan*(3) to the effect that while initiating the selection process, apart from the existing vacancies, anticipated vacancies had to be taken note of and that the selection had to be completed to fill up not only the existing but the anticipated vacancies which were likely to fall due in the vacancy year. A Division Bench of this Court found that when the vacancy position was determined by this Court, it could be easily worked out that 3 vacancies would come into existence. Thus limited relief was granted directing that only three vacancies need to be filled up and mandamus was thus issued that the candidates at merit position 14, 15 and 16 be issued letters of offer appointing them in the cadre of Delhi Higher Judicial Service.”

16. It would also be useful to reproduce paras 11, 12, 20, 22, 24, 25 and 28 of the aforesaid judgment.

“11. The Supreme Court noted its prior decision in *Malik Mazhar Sultan*(3) case, as also the fact that it was delivered on 04.01.2007 and that the vacancies were advertised by the Delhi High Court on 19.05.2007, i.e. conscious of the directions issued by the Supreme Court in *Malik Mazhar Sultan* (3) case, in para 7 of the pronouncement, reference was made to the decisions reported as 1992 Supp (3) SCC 84 *Union of India Vs. Ishwar Singh Khatri*, 1994 Supp (2) SCC 591 *Gujarat State Dy. Executive Engineers*

Assn. Vs. State of Gujarat, (1994) 1 SCC 126 State of Bihar Vs. Secretariat Asst. Successful Examinees Union 1986, (1996) 4 SCC 319 Prem Singh Vs. Haryana SEB and (1996) 1 SCC 283 Ashok Kumar Vs. Banking Service Recruitment Board and ratio was discussed in the subsequent paras. The legal position culled out in para 12 by the Court was that it would be impermissible to make appointments beyond the number of vacancies advertised and the reason for the said opinion was that the same would violate Article 14 and 16 (1) of the Constitution of India. It was concluded in the summarization of the law that any such act would be a nullity, inexecutable and unenforceable in law. In para 22, the Supreme Court also observed that the advertisement in question was not challenged on the ground that it was not in conformity with the directions issued by the Supreme Court in Malik Mazhar Sultan(3) case.

12. With respect to the mandamus issued by the Delhi High Court Division Bench that 3 determinable anticipated vacancies should be filled up, a direction which would be contrary to the law declared by the Supreme Court in Rakhi Ray's case, in para 23 of its opinion, the Supreme Court held that since said part of the decision of the Division Bench was not challenged before it, it would neither be desirable nor permissible in law for the Court to make any comment on that.

20. Noting the factual content required to be noted to answer the fourth question referred to us for our opinion, it be noted that on 20.4.2010 the Supreme Court took up for consideration not only CA No.1867/2006 but also pending applications in WPC No.1022/1989 All India Judges Association & Ors. Vs. UOI & Ors. and passed a composite order. The Court listed WPC No.1022/1989 at Sl.No.1 in the list of cases in which the composite order was passed and while so doing, the Supreme Court noted the information given by the Delhi High Court pertaining to not advertising all vacant posts due to paucity of court accommodation and other infrastructure. It be highlighted by us further that, as against information given by the Delhi High Court that only 113 posts were vacant, it got typed in the order that 216 posts were vacant and pertaining to the information given that only 60 posts were advertised to be filled up, it got erroneously typed that 64 posts were advertised to be filled up. We hasten to add that the number is not relevant, what is relevant is the fact that the Delhi

High Court informed the Supreme Court that it was not filling up all existing vacant posts on account of paucity of court rooms, and the Supreme Court simply noted said fact and did not pass any directions to the Delhi High Court to notify and fill up all the vacancies.

22. Issue raised in Rakhi Ray's case was concerned with anticipated vacancies and not with existing vacancies and in that sense one may rush at first blush to answer the first question by replying that Rakhi Ray's case has no application in the instant case since the issue raised herein is whether notwithstanding existing vacancies being 113 only 60 could be advertised to be filled up, but one aspect of Rakhi Ray's case would be applicable to the instant case. The ratio of law declared therein that it is impermissible to fill up vacancies in excess of those notified would apply to the facts of the instant case notwithstanding the factual difference in the thematic setting of Rakhi Ray's case and the instant case in the context of the theme therein being the violation of the direction in Malik Mazhar Sultan(3) case that 10% anticipated vacancies had to be reckoned along with the existing vacancies while inviting applications and the theme of the instant case being 53 existing vacancies being ignored. The other aspect of the matter covered by Rakhi Ray's case which would also be applicable to the instant case would be the same i.e. in the absence of challenge to the notification inviting applications by restricting the number to 60, it would be impermissible to question recruitment being restricted to only 60%. We may highlight that in Rakhi Ray's case the Supreme Court emphasized the effect of the advertisement in question not being challenged; the effect of the lack of challenge being noted in para 22 of the said decision.

24. We see no conflict for the reason while issuing the directions in Malik Mazhar Sultan (3) the Supreme Court was not deciding any lis and was issuing general directions in exercise of its power under Article 142 of the Constitution of India and thus it is apparent that the Supreme Court was not laying down any special service jurisprudence applicable to the judiciary in India. Indeed, if the Supreme Court had so intended, it would have been expressly so stated. The anxiety of the Supreme Court was to fill up judicial posts all over India keeping in view the docket explosion in Courts and delays in effectuating judicial appointments. It is in this context that the general directions issued by the Supreme Court have to be

understood and appreciated. The fact that the Supreme Court drew out an exception for the State of Sikkim as well as the one time exception for the Delhi High Court is recognition by the Supreme Court that if exigencies of the situation so demands, exceptions could be carved out to the intent and purport of the directions issued by the Supreme Court.

25. Since we have held that Malik Mazhar Sultan (3) did not intend and has not laid down any special service jurisprudence pertaining to the judiciary in India, the question of recognizing and then resolving the conflict does not arise. We terminate our discussion while answering the second question referred to the Full Bench by highlighting that in Rakhi Ray's case (supra) the Supreme Court duly noted the directions issued by the earlier Bench of the Supreme Court in Malik Mazhar Sultan (3) and yet in spite thereof applied the law of the land and the recognized service jurisprudence to answer the issues raised in Rakhi Ray's case. The Supreme Court recognized in Rakhi Ray's case that notwithstanding directions pertaining to anticipated vacancies issued in Malik Mazhar Sultan (3) case, the Constitution of India pertaining to service jurisprudence impinging upon Article 14 and 16(1) of the Constitution of India had to be applied and could not be ignored. It additionally assumes importance to note that the decision in Rakhi Ray's case is by a Three Judge Bench and the directions issued in Malik Mazhar Sultan (3) case is by a Two Judge Bench.

28. To the fourth question, the answer would be self evident. The Supreme Court which was monitoring the continuous mandamus issued by it in the All India's Judges' Association's case (supra) and the Malik Mazhar Sultan (3) case (supra) was expressly informed by the Delhi High Court that, notwithstanding 113 existing vacancies in the cadre of the Delhi Judicial Service, only 60 were being filled up and the reason for the same being paucity of court rooms was specifically stated. In spite thereof, no direction was issued by the Supreme Court compelling the Delhi High Court to come what may, the direction issued in Malik Mazhar Sultan (3) case be complied with. The silence by the Supreme Court after taking cognizance of the said information provides a self answer to the query. Law is that where there is an obligation to speak or direct, silence would mean acquiescence or acceptance of the view point of the other, and thus the fact that the Supreme Court in its order dated 20.04.2010 simply noted said information given by the

Delhi High Court but passed no directions would mean, if not express, a tacit recognition by the Supreme Court that service jurisprudence absolves an employer not to fill up existing posts if there are good and justified grounds for not doing so.”

17. The purpose of quoting extensively the judgment rendered by the Full Bench in *Sanjeet Singh* (supra) is that identical grounds, which are sought to be urged before us today, have already been considered by the Full Bench and the same were rejected primarily based on the judgment rendered by the Supreme Court of India in the case of *Rakhi Ray* (supra).
18. Having regard to the fact that the petitioners at the first opportunity available could have ascertained the existing/anticipating number of vacancies which they did not, thus they have not challenged the advertisement. Besides that the Supreme Court in the case of *Rakhi Ray & Ors.* (supra), has categorically held that the vacancies over and above the vacancies advertised cannot be filled up. Resultantly, we do not find it necessary to issue notice. Both the writ petitions are without any merit and the same are dismissed accordingly. No costs.

CM APPL.17465/2015 (STAY) IN W.P.(C) 8285/2015
CM APPL.9443/2015 (STAY) IN W.P.(C) 22069/2015

19. Applications stand dismissed in view of the order passed in the writ petitions.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

October 14th, 2015

msr