

GOVERNOR HADJI ARSAD SALI, PETITIONER AND APPELLEE, VS. BENJAMIN ABUBAKAR, ET AL., RESPONDENT AND APPELLANT.

G.R. No. 24439. August 29, 1966

Ponente: CONCEPCION, J.

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CONCEPCION, J.:

Appeal from an order of the Court of First Instance of Sulu.

In connection with an election protest filed by Benjamin R. Abubakar against Hadji Arsad Sali and docketed as Case Special Remedies No. 81 of said Court, involving the office of Provincial Governor of Sulu, the court issued on September 4, 1964 - on motion of protestant Abubakar, and in the course of the revision of the ballots contested therein - an order authorizing him "to avail himself of the services of handwriting and/or thumbmark experts" who "may at any time avail themselves of all the questioned ballots" in said case "for examination and study subject to the supervision" of the court. Purporting to act in conformity with this order, Abubakar availed of the services of handwriting and fingerprint experts of the National Bureau of Investigation - hereinafter referred to as NBI - and other employees of said office, who examined the ballots aforementioned under the supervision of the Clerk and the Deputy Clerk of Court of Sulu.

Sometime in October 1964, protestee Sali instituted, however, the present case (docketed as Special Remedy No. 92 of the same court) against Abubakar, the aforementioned officers of the NBI and the Clerk as well as the Deputy Clerk of Court of Sulu, for the purpose of preventing them from further examining said ballots and securing a declaration to the effect that the expert examination thereof conducted by NBI agents is null and void. Upon the submission of Abubakar's answer to the amended petition filed by Sali, which included the NBI Director as one of the respondents herein, the case was called for hearing and later submitted for decision, without the presentation of any evidence. Soon thereafter, the lower court issued an order, dated January 20, 1965, the dispositive part of which reads as follows:

"IN VIEW OF THE FOREGOING, this Court is of the belief, and so holds, that the respondents NBI Agents as directed by respondent NBI Director were without legal authority to conduct the expert examination of the petitioner's questioned ballots in Special Remedies No. 81 of this Court.

"WHEREFORE all the respondents herein are ordered to desist from further expert examination of the questioned ballots in Special Remedies No. 81, and the writ of preliminary injunction issued by this Court dated October 3, 1964, which is reiterated in its order dated October 14, 1964 is hereby made permanent.

"Considering that respondent NBI Director Lukban and respondents NBI Agents were without legal authority to assist in the expert examination in question, this Court hereby declares null and void the entire expert examination proceedings so conducted on the petitioner's questioned ballots in Special Remedies No. 81 pending before this Court."

Hence, this appeal by respondent Abubakar.

The order appealed from is predicated upon the theory that the law creating the NBI [1] merely authorizes the same "to give technical aid to all prosecuting and law enforcement officers and entities of the Government, as well as to the courts that may request its services" [2]; that said law does not authorize the NBI to give aid to private party litigants; and that, since the aforementioned order of the lower court, dated September 4, 1964, did not explicitly authorize Abubakar to engage the services of NBI experts, it follows that the examination of the contested ballots by said experts is illegal, as well as null and void.

At the outset, it should be noted that, pursuant to Subdivision (b) of Section 1 of Republic Act No. 157, the NBI may "render assistance, whenever properly requested in the investigation or detection of crimes or other offenses." It further appears that the order of September 4, 1964, authorizing the examination of contested ballots by handwriting and fingerprint experts, was issued on motion of Abubakar, based upon the claim that said ballots were "written by few hands" and/or "thumbmarked by one or a few persons" - which, if true, constitute offenses punishable under the law. [3]

At any rate, we do not deem it necessary to pass upon the question whether or not the NBI may extend technical aid to parties other than law enforcement officers and/or entities of the Government, including courts. Even if the answer were in the negative - on which we need not and do not express our view - it is our considered opinion that such negative premise would not necessarily justify the conclusion reached in the order appealed from.

It is obvious that the public officials exercising supervision and control over the NBI must be guided by the pertinent laws in determining whether or not said office may or should extend its aid to a party in a given case. This, however, is essentially an administrative matter, and, as such, the relief against such irregularities as may be committed in connection therewith should be sought from the corresponding superior officer or administrative organ.

The fact that, in a particular litigation, an NBI expert examines certain contested documents, at the request, not of a public officer or agency of the Government, but of a private litigant, does not necessarily nullify the examination thus made. Its purpose is, presumably, to assist the court having jurisdiction over said litigation, in the performance of its duty to settle correctly the issue relative to said documents. Even a non-expert private individual may examine the same, if there are facts within his knowledge which may help the court in the determination of said issue. Such examination, which may properly be undertaken by a non-expert private individual, does not, certainly, become null and void when the examiner is an expert and/or an officer of the NBI.

Indeed, any person, expert or not, either in his private or in his official capacity, may testify in court on matters, within his personal knowledge, which are relevant to a suit, subject to the judicial authority to determine the credibility of said testimony and the weight thereof. Upon the other hand, the question whether a public official may or shall be ordered or permitted by his superior officer to examine documents and testify thereon in a given case, is one mainly administrative in character, which is within the competence of said superior officer, or the Bureau Director or Head of the Office, or the corresponding department head to decide, and is independent of the validity of the examination thus made or of the credence and weight to be given by the Court to the conclusions reached, in consequence of said examination, by the official who made it.

WHEREFORE, the order appealed from is hereby reversed and the complaint herein dismissed, with costs against petitioner-appellee Hadji Arsad Sali.

IT IS SO ORDERED.

Reyes, J.B.L., Barrera, Dizon, Makalintal, Bengzon, JP, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.
Regala, J., on leave.

[1] Republic Act No. 157.

[2] Section 1 (d) of Republic Act No. 157.

[3] Sections 183 to 186, Republic Act No. 180.

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