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has been bestowed by law upon the CIR in a certified labor dispute, we are of the considered opinion that the said tribunal did not exceed its jurisdiction in issuing its order of January 27, 1964.

This Court, however, cannot dismiss as frivolous or inconsequential the Company's assertion that it acted in the manner it did in its *bona fide* belief that the totality of Badillo's various infractions of Company rules justified her dismissal. In view thereof, we uphold the decision of the CIR to the effect that although Badillo is entitled to reinstatement, she should not be awarded back wages or any other pecuniary compensation for the period from February 15, 1960 (the date of her dismissal) to the date of her reinstatement.

ACCORDINGLY, modified in the sense that the reinstatement of Badillo shall take effect on July 21, 1964, when the CIR *en banc* denied the PLDT's motion for reconsideration, the judgment *a quo* is affirmed. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor and *Makasiar, JJ.*, concur.

[G.R. No. L-23618. August 31, 1970]

LUZON SURETY CO., INC., *plaintiff-appellant, vs.* THE CITY OF BACOLOD, ROMEO GUANZON, in his capacity as Mayor of the City of Bacolod and PORFIRIO T. DE LEON, in his capacity as Treasurer of the City of Bacolod, *defendants-appellees.*

SYLLABUS

1. **POLITICAL LAW; LOCAL AUTONOMY ACT; POWER OF CHARTERED CITIES TO TAX, EXCEPTION.—** No doubt surfaces as to the power of chartered cities to tax under the Local Autonomy Act. This Court has consistently upheld the "doctrine that the grant of the power to tax to chartered cities under Section 2 of the Local Autonomy Act is sufficiently

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plenary to cover everything excepting those which are mentioned' therein, subject only to the limitation that the tax so levied is for 'public purpose, just and uniform'." Section 2, subsection (j) of the Local Autonomy Act prohibits cities from taxing insurance companies.

2. **WORDS AND PHRASES; "FIADOR" DEFINED.**— Robb's *Dictionary of Legal Terms* (1966), p. 56, gives the word "fiador" this meaning: "bondsman, surety, guarantor, bailor, backer." The New *Revised Velasquez Spanish and English Dictionary* (1965) states that a "fiador" is "1. One who trusts another 2. Bondsman, guarantor, surety, or one who becomes security for another." *36A C.J.S. 375* has this to say on the meaning of the word "fiador": "In Spanish Law, surety." *XVI Enciclopedia Juridica Española 233* describes "fiador" as "El que responde de la obligacion ajena, tomando sobre si el cumplimiento de ella para el caso de que no la cumpla el que contrajo." In our own jurisprudence, "fiador is defined in the Real Academia Castellana as 'persona que fia a otra para la seguridad de aquello a que esta obligada.' "

3. **ID.; ID.; AMERICAN; JURISPRUDENCE.**— The Cyclopedia of Insurance Law states: "A class of contracts written by guaranty or surety companies, and generally designated as guaranty insurance, comprises principally contract, credit, fidelity, title, bond, and security guaranty generally. Contracts of this kind are now almost universally regarded as those of insurance where the underwriter engages in the business for profit, especially since the terms of such contracts usually closely resemble the essential elements of an insurance contract."

4. **ID.; CONTRACTS; FIDELITY GUARANTY; MEANING.**— On the business of fidelity guaranty, the Cyclopedia of Insurance Laws declares that "contracts of fidelity guaranty are contracts of indemnity, and, where the business of underwriting is undertaken, which like other contracts of insurance, are construed against the insurer."

5. **ID.; CONTRACT OF GUARANTY.**— On the business of contract guaranty, the Cyclopedia of Insurance Law comments that "the general rule that the bonds of guaranty and surety companies, who engages in the business for profit, are essentially insurance contracts and are governed by the rules of construction applicable thereto, rather than by the rules applicable to strict or pure contracts of suretyship, applies to bonds

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guaranteeing the carrying out or performance of contracts to do a particular act or carry out a particular project."

6. **TAXATION; PRIVILEGE TAX; LIABILITY THEREFOR OF SURETY COMPANY; CASE OF AMERICAN SURETY CO. OF NEW YORK *VS.* FOLK INSURANCE COMMISSIONER.**— The American Surety Company, required by the laws of the State of Tennessee to pay privilege taxes based on gross premium, brought suit against the Insurance Commissioner denying its liability for the payment of the taxes, contending it was not an insurance company. The Supreme Court of Tennessee rejected this contention on the basis of its finding that the American Surety Company was authorized to conduct the business of "guaranteeing the fidelity of persons holding places of public and private trust, the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed," and its ruling that the contracts thus authorized to be made by the American Surety Company are contracts of insurance and the making of them is insurance business, as defined by the statutes of the State and the common law.

7. **POLITICAL LAW; LOCAL AUTONOMY ACT; POWER OF CHARTERED CITIES TO TAX; CASE AT BAR.**— The plaintiff, which is the holder of a "Certificate of Authority" (issued by the Insurance Commissioner) as a "fire, marine, earthquake, typhoon, tidal wave, riot, flood, civil commotion, war, civil war, revolutions, rebellions, military or usurped power, use & occupancy, storm bombardment, invasion, insurrection, motor car, burglary, accident, and fidelity insurance company," and is authorized "to become a surety upon official recognizances, stipulations, bonds and undertakings," (a) is engaged in the insurance business, and (b) is an insurance company within the intendment of Section 2(j) of the Local Autonomy Act.

8. **ID.; ID.; CHARTERED CITIES; CHARTER OF BACOLOD CITY; ANNUAL PERMIT FEE IN EXERCISE OF POLICE POWER; CASE AT BAR.**— As to the P20 annual permit fee, it is our view and we so hold that the plaintiff was correctly adjudged liable for the payment thereof. The authority of the City of Bacolod to require persons and entities engaged in and conducting any business within its jurisdictional territory to

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obtain permits and pay the corresponding permit fees, is specifically granted by paragraph (ee) of Section 17 of Commonwealth Act 326 (known as "The Charter of the City of Bacolod) approved on June 18, 1938. In requiring permits and the payment of nominal permit fees, the ordinance itself invokes police power.

APPEARANCES OF COUNSEL

Tolentino, Garcia and *D.R. Cruz* for plaintiff-appellant.
Jesus V. Ramos for defendants-appellees.

DECISION

CASTRO, *J.*:

On July 1, 1962 the city council of the City of Bacolod approved Ordinance 158, series of 1962.[1] Pursuant to the said ordinance the plaintiff Luzon Surety Co., Inc. was required to pay a fixed annual license fee of P300 and to apply for and obtain from the City Mayor a permit (upon payment of the sum of P20 to the City Treasurer).[2] In 1963 the plaintiff started to pay the said fees, but under protest.

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[1] "An Ordinance Fixing the Classification and Schedule of Fees for the Issuance of Permits and Licenses and the Conduct Thereof for the Opening, Practice, Exercise, Conduct and/or Establishment of any Profession, Act or Trade, Business, Occupation or Calling or Industry Within the Jurisdictional Territory of the City of Bacolod." The complete text of this prolix ordinance is reproduced on pp. 5 to 91 of the Record on Appeal.

[2] The pertinent portions of the ordinance read as follows:

"Section 1.- *License, Permit Fees, Application Collections thereof, and other purposes.* Article 1. - A License or Permit Fee must first be paid before any business, trade, occupation or profession, or industry hereinbelow specified can be lawfully began, established, conducted, exercised, or pursued, said business, trade, occupation or profession, or industry is payable for every separate or distinct establishment or place or location where business, trade, occupation or profession, or industry, or line of any of them, does not become exempt by being conducted with some other business, trade, occupation or profession, or industry, for which such license has been paid.

* * *

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On February 13, 1964 the plaintiff filed a complaint with the Court of First Instance of Negros Occidental, assailing the ordinance as "illegal, invalid and unconstitutional," and asking for the refund of the amount of P430 it had previously paid under protest. The plaintiff alleged, *inter alia,* that the Bacolod City council exceeded the power and authority granted to it by law in approving the said ordinance, as the latter contravenes Section

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"Article 2. *Permits necessary.*- It shall be unlawful for any person or entity to conduct or engage in any of the businesses, trades, or occupations enumerated herein, and other businesses, trades, or occupations for which a permit is required for the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security and welfare of the public and the health of the employees engaged in the business therein specified, without first having obtained a permit therefor from the Mayor and the necessary license from the City Treasurer.

* * *

"Article 4. *Fees.* - There shall be paid to the City Treasurer for every permit issued by the Mayor for that business, trade or occupation hereinbelow enumerated, as in this Ordinance provided, an annual [permit] fee in accordance with the following schedule:

* * *

83. All other business, trade or occupation not mentioned in this ordinance, except those upon which the City is not empowered to license or to tax P20.00

* * *

"Section 3. *Fixed Annual Fees.*

"Article 1. For purpose of the collection of fixed annual fees for the exercise, conduct, establishment, occupation or profession, or industry as herein above stated and which are not subject to fees based on gross sales or output realized by the exercise or conduct of said business, trade, occupation or profession, or industry, the following schedule shall be observed and followed:

* * *

FIXED ANNUAL FEES

AGENCIAS

"P-17 Fiadores (Casas y Companias) ..... P300.00"

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2, sub-section (j) of Republic Act 2264[3] which prohibits cities from taxing insurance companies.

The defendants contended, however, that Commonwealth Act 326, as amended, otherwise known as "The Charter of the City of Bacolod," grants the city council the power to enact ordinances intended to regulate and fix the amounts of permit and license fees, and that moreover the ordinance in question does not violate Section 2, sub-section (j) of the Local Autonomy Act because the plaintiff is a surety company and not an insurance company.

On July 25, 1964 the lower court adjudged the plaintiff as a surety company and not an insurance company and, therefore, as not entitled to claim exemption from the effects of the controverted ordinance, which it declared valid, legal and constitutional.

The plaintiff's appeal to this Court poses in issue the validity of the specific portions of the ordinance (see footnote 2) prescribing fixed annual license and permit fees for "Fiadores (Casas y Companias)," insofar as these provisions are construed by the City of Bacolod to include surety companies within their purview and intendment, the plaintiff insisting that a surety company is an insurance company, that no distinction of consequence exists between the two, and that therefore the plaintiff falls within the mantle of the exemption afforded by Section 2, sub-section (j) of the Local Autonomy Act, which explicitly prohibits chartered cities from levying or imposing "taxes of any kind on banks, *insurance companies* and persons paying franchise tax." (italics supplied)

The defendants, on the other hand, while admitting that the plaintiff is a surety company, nevertheless insist that fundamental distinctions exist between a surety company and an insurance company, and that the plaintiff, its principal business being one of suretyship, does not fall under the exemption granted by Section 2, sub-section (j) of the Local Autonomy Act,

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[3] "An Act Amending the Laws Governing Local Governments by Increasing their Autonomy and Reorganizing Provincial Governments" (otherwise known as the Local Autonomy Act).

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the exemption exclusively being applicable only to companies doing *purely insurance business.*

Resolution of this appeal requires a determination of whether a surety company is an insurance company within the meaning and intendment of Section 2, sub-section (j) of the Local Autonomy Act, both parties being in agreement that the license fee in question is in the nature and concept of a tax.

No doubt surfaces as to the power of chartered cities to tax under the Local Autonomy Act. The Court has consistently upheld the "doctrine that the grant of the power to tax to chartered cities under Section 2 of the Local Autonomy Act is sufficiently plenary to cover 'everything, excepting those which are mentioned' therein, subject only to the limitation that the tax so levied is for 'public purposes, just and uniform'."[4]

We hereunder quote the pertinent provisions of the Local Autonomy Act:

"Section 2. Any provision of the law to the contrary notwithstanding, all chartered cities . . . shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, . . . *Provided, however,* That no city . . . may levy or impose any of the following:

"(j) Taxes of any kind on banks, insurance companies, and persons paying franchise tax; . . ."

Is the word "fiadores," as used in item P-17 of Article 1 of Section 3 of the ordinance, comprehended within the meaning of the term " insurance companies" as used in Section 2(j) of the Local Autonomy Act?

To begin with, we look to the provisions of Act 2427, as amended (otherwise known as "The Insurance Act"). Section 170 thereof provides that "for the purpose of this chapter

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[4] Nin Lay Mining Company *vs.* Municipality of Roxas, Province of Palawan, L-20125, July 20, 1965; C.N. Hodges *vs.* Municipal Board of the City of Iloilo, et al., L-18276, Jan. 12, 1967; Ormoc Sugar Company *vs.* Municipal Board of Ormoc City, et al., L-24322, July 21, 1967.

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[captioned INSURANCE COMPANIES] unless the context otherwise requires the terms 'company' or 'insurance company' shall include all corporations, associations, partnerships, or individuals engaged as principals in the insurance business excepting fraternal and benevolent orders and societies." Section 194 of the same Act provides as follows: "Corporations formed or organized to save any person or persons or other corporation harmless from loss, damage, or liability arising from any unknown or future or contingent event, or to indemnify or to compensate any person or persons or other corporation for any such loss, damage, or liability or to guarantee the contractual obligations or debts of others, shall be known as Insurance Corporations for the purposes of this chapter."

Let us now examine authoritative definitions of the word "fiador." Robb's *Dictionary of Legal Terms* (1966), p. 56, gives the word "fiador" this meaning: "bondsman, surety, guarantor, bailor, backer." The *New Revised Velasquez Spanish and English Dictionary* (1965) states that a "fiador" is "1. One who trusts another 2. Bondsman, guarantor, surety, or one who becomes security for another." *36A C.J.S. 375* has this to say on the meaning of the word "fiador": "In Spanish law, surety." *XVI Enciclopedia Juridica Española 233* describes "fiador" as "El que responde de la obligacion ajena, tomando sobre si el cumplimiento de ella para el caso de que no la cumpla el que contrajo." In our own jurisprudence, "*fiador* is defined in the Real Academia Castellana as 'persona que fia a otra para la seguridad de aquello a que esta obligada.'"[5]

We now turn to American jurisprudence.

The *Cyclopedia of Insurance Law*[6] states:

"A class of contracts written by guaranty or surety companies, and generally designated as guaranty insurance, comprises principally contract, credit, fidelity, title, bond, and security guaranty generally. Contracts of this kind are now almost universally regarded as those

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[5] Agcaoili *vs.* Vda. de Agcaoili, 90 Phil. 100.

[6] George C. Couch, *Cyclopedia of Insurance Law*, p. 45.

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of insurance where the underwriter engages in the business for profit, especially since the terms of such contracts usually closely resemble the essential elements of an insurance contract."

On the business of fidelity guaranty, the same authority declares that "contracts of fidelity guaranty are contracts of indemnity, and, where the business of underwriting is undertaken for profit, are essentially insurance contracts, which, like other contracts of insurance, are construed against the insurer."[7] On the business of contract guaranty, the same authority comments that "the general rule that the bonds of guaranty and surety companies, who engage in the business for profit, are essentially insurance contracts and are governed by the rules of construction applicable thereto, rather than by the rules applicable to strict or pure contracts of suretyship, applies to bonds guaranteeing the carrying out or performance of contracts to do a particular act or carry out a particular project."[8]

An American case[9] resolved, with meticulous care, the problem of whether a surety company engages in insurance business for purposes of taxation. The American Surety Company, required by the laws of the State of Tennessee to pay privilege taxes based on its gross premiums, brought suit against the Insurance Commissioner denying its liability for the payment of the taxes, contending it was not an insurance company. The Supreme Court of Tennessee rejected this contention on the basis of its finding that the American Surety Company was authorized to conduct the business of "guaranteeing the fidelity of persons holding places of public and private trust, the performance of contracts other than insurance policies, and executing or guaranteeing bonds and undertakings required or permitted in all actions or proceedings or by law allowed," and its ruling that the contracts thus authorized to be made by the American Surety Company are contracts of insurance and the making of them is insurance business, as defined by the statutes of the State and the common

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[7] *Ibid.*, pp. 40-41.

[8] *Ibid.*, p. 24.

[9] American Surety Company of New York *vs.* Folk, Insurance Commissioner, 135 SW 778.

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law. The court, in support of its opinion, quoted Frost's *Law of Guaranty Insurance,* thus:

"In view of all that has been said in this immediate connection, can it be affirmed that fidelity, commercial, and judicial bonds or policies, as issued by the so-called surety companies, constitute contracts of insurance within the legal signification of that term? The answer to the foregoing query must be unqualifiedly in the affirmative."

Thus, the conclusion seems rather irresistible that the plaintiff, which is the holder of a "Certificate of Authority" (issued by the Insurance Commissioner)[10] as a "fire, marine, earthquake, typhoon, tidal wave, riot, flood, civil commotion, war, civil war, revolutions, rebellions, military or usurped power, use & occupancy, storm, bombardment, invasion, insurrection, motor car, burglary, accident, and fidelity insurance company," and is authorized "to become a surety upon official recognizances, stipulations, bonds and undertakings,"[11] (a) is engaged in the insurance business, and (b) is an insurance company within the intendment of Section 2(j) of the Local Autonomy Act.

We therefore hold that the plaintiff is not liable for the payment of the annual license fee of P300 imposed by the ordinance in question.

As to the P20 annual permit fee, it is our view and we so hold that the plaintiff was correctly adjudged liable for the payment thereof. The authority of the City of Bacolod to require persons and entities engaged in and conducting any business within its jurisdictional territory to obtain permits and pay the corresponding permit fees, is specifically granted by paragraph (ee) of Section 17 of Commonwealth Act 326 (known as "The Charter of the City of Bacolod"), approved on June 18, 1938, which empowers the city council to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of

[10] Record on Appeal, pp. 98-99.

[11] Record on Appeal, pp. 101-104.

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the city and its inhabitants."[12] In requiring permits and the payment of nominal regulatory permit fees, the ordinance itself invokes police power, stating explicitly that permits are necessary "for the proper supervision and enforcement of existing laws and ordinances governing the sanitation, security and welfare of the public and the health of the employees engaged in the business therein specified."

ACCORDINGLY, the judgment *a quo* is set aside, and another is hereby entered (1) declaring that the item "B-17 Fiadores (Casas y Companias) ...P300.00" of Article 1 of Section 3 of Ordinance 158, series of 1962, of the respondent City of Bacolod does not embrace within its purview, and is not applicable to, surety companies and corporations, such as the Luzon Surety Company, Inc., and (2) ordering the respondent City to refund to the Luzon Surety Company, Inc. all sums of money the latter has paid in virtue of the implementation and enforcement of the said item by the respondent City. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Barredo, Villamor and *Makasiar, JJ.*, concur.

[G.R. No. L-23762. August 31, 1970]

ROSARIO VARGAS, *petitioner, vs.* PHILIPPINE AMERICAN EMBROIDERIES, INC. and THE HON. N. BAENS DEL ROSARIO as Chairman of the Workmen's Compensation Commission, *respondents.*

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[12] Cf. Section 2238 of the Revised Administrative Code which provides: *"General power of council to enact ordinances and make regulations.-* The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein." This provision of law, to the extent and scope of its terms, delegates police power to municipal corporations.