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In case no. 2833-20, **Lund Municipality** (Appellant) v. **Björkbom Group AB** (Respondent), the Supreme Administrative Court delivered the following judgment on 19 April 2021.

RULING OF THE SUPREME ADMINISTRATIVE COURT

The Supreme Administrative Court grants the appeal, overturns the judgment of the administrative court of appeal and affirms the judgment of the administrative court.

BACKGROUND

1. In order to engage in the retail sale of tobacco products, a permit is required from the municipality in which the point of sale is located. Only persons who, with regard to their personal and economic conditions and circumstances in general, are suitable to operate the business may be granted such a permit. When the applicant is a legal person, the assessment of suitability also covers the natural persons who exercise significant influence on the business.
2. Björkbom Group AB, as franchisee, operates a petrol station in Lund municipality. The franchisor is St1 Sverige AB. Björkbom Group applied for a permit to engage in the retail sale of tobacco products. During the processing of the matter, the municipality requested that the company submit the franchise agreement. Björkbom Group submitted an extract from the agreement but did not provide it in its entirety.
3. Lund municipality rejected the application with the argument that the company had not demonstrated that it fulfilled the suitability requirement. According to the municipality, the influence and economic interest the franchisor has in the business could not be evaluated based on the extract. As the company had not submitted the franchise agreement in its entirety, the group of persons with

significant influence on the business could not be identified. Accordingly, the company's suitability could not be examined.

4. Björkbom Group appealed the decision to the Administrative Court in Malmö which rejected the appeal.
5. The judgment was appealed to the Administrative Court of Appeal in Gothenburg which stated the following. It cannot be excluded that a municipality needs to obtain a franchise agreement in order to examine who has significant influence on a business. This might be the case where there are indications in the examination that the agreement regulates issues regarding decision-making rights of someone else or financing of the business and in which there is a suspicion that the applicant actually represents someone who wishes to avoid examination. Taking into account the issues normally regulated by a franchise agreement, however, it should normally be the exception that such an agreement is relevant to the examination of the application for a permit. There is no indication that the company's franchise agreement regulates conditions which are material to the assessment of suitability. Accordingly, it was not necessary to require the agreement from the company.
6. The administrative court of appeal was of the opinion that conditions for not granting the application were not present solely due to the fact that the agreement had not been submitted, and remanded the case to the municipality for renewed assessment of the application.

CLAIMS, ETC.

7. *Lund municipality* claims that the Supreme Administrative Court, by way of amendment of the judgment of the administrative court of appeal, is to affirm the decision of the municipality and states the following.

8. The supervisory authority must have the mandate to determine which information is necessary for its examination. It is common that franchise agreements regulate issues which directly affect a permit holder's possibilities to independently operate its business and grant the franchisor interest in the business and possibilities to influence the operation. Neither the municipality nor the courts have received the franchise agreement in its entirety and, therefore, they cannot determine whether the agreement is relevant to the examination of the application for a permit. The municipality regularly requests franchise agreements in conjunction with the examination of applications for a permit to serve alcohol in accordance with the alcohol legislation and this has at no time shown itself to be unwarranted.
9. *Björkbom Group AB* is of the position that the appeal is to be rejected and states the following. The requested agreement is irrelevant to the assessment. A majority of the other franchisees who are included in the same chain have been granted permits without needing to provide the franchise agreement to the relevant supervisory authority. Disclosure of the agreement constitutes a breach of agreement in relation to the franchisor. The municipality has been offered several alternative and less intrusive solutions for it to be able to conduct its examination, but this has not been accepted. Accordingly, the principle of proportionality has not been observed.

REASONS FOR THE RULING

The question in the case

10. The question in the case is which information a municipality is entitled to require from applicants for permits to engage in the retail sale of tobacco products in order for the municipality to be able to examine the applicant's suitability to operate the business.

Legislation, etc.

11. Chapter 5, sections 1 and 2 of the Tobacco and Similar Products Act (2018:2088) provide that a permit to engage in sales of tobacco products may only be granted to persons who demonstrate that he or she, taking into account his or her personal and economic conditions and circumstances in general, is suitable to operate the business. In the event the applicant is a legal person, the suitability requirements must also be imposed on the natural person or persons who exercise significant influence on the business (Government Bill 2017/18:156, p. 191).
12. As regards the investigative responsibility of authorities, section 23 of the Administrative Procedure Act (2017:900) prescribes that an authority is to ensure that a matter is investigated to the extent required by its nature and that an individual party who initiates a matter shall participate by submitting, as far as possible, the information the party wishes to present in support of its application.
13. Section 5, third paragraph of the Administrative Procedure Act prescribes that an authority may only intervene in a private interest if the measure can be assumed to lead to the intended result and that the measure must never be more far-reaching than is needed and may be taken only if the intended result is in reasonable proportion to the inconvenience that can be assumed to arise for the private person the measure is aimed at.

The Court's assessment

14. An authority shall ensure that a matter is investigated to the extent required by its nature and has the ultimate responsibility for ensuring that the available information is such that it may form the basis of decisions. In an application matter, the authority may need to order the applicant to participate by submitting the information necessary for the examination of the application.
15. An assessment by an authority of the information it deems necessary for its examination should, as a rule, be accepted as long as it does not entail

unreasonable costs or an unreasonable work burden for the individual (Government Bill 2016/17:180, p. 150). The principle of proportionality as expressed in section 5 of the Administrative Procedure Act does not alter this as it concerns interventions by an authority and presupposes that clear maladministration subsists between the public interest in a particular intervention and the burden such entails for the individual (*ibid.*, Government Bill, p. 62 f.).

16. Accordingly, there is normally no reason for a court, in the review of an appealed decision in an application matter, to question whether the authority's investigative measures were necessary. Except in exceptional cases, there is no reason for the court to base its decision on a determination of this issue.
17. As regards the examination of an application for a permit to engage in retail sales of tobacco products, the suitability of the applicant to carry on the business is assessed. In the event the applicant is a legal person, this assessment of suitability also covers the natural person or persons who exercise a significant influence in the business. This includes, among others, the managing director, board members and shareholders with significant shareholdings, but the examination may also cover another financial stakeholder (Government Bill 2017/18:156, p. 191.)
18. It might be justified in such a licensing matter to verify that the applicant is not economically dependent on anyone who is unsuitable to engage in tobacco sales or subject to economic undertakings which materially limit the applicant's possibilities to exercise control of the operation of the point of sale. It is also important that the supervisory authority is vigilant in respect of applications in which the applicant actually represents someone who wishes to avoid examination, i.e. in situations involving a so-called straw man relationship. (*Ibid.*, Government Bill, p. 63.)
19. A condition for being able to assess an applicant's suitability is thus that it must be established who is to be covered by the assessment of suitability. In every individual matter, the supervisory authority shall determine which information is necessary in order for the investigation to be regarded as sufficient in this respect

and must have the possibility to order the applicant to submit the information necessary.

20. Lund municipality has requested that the company submit the franchise agreement with St1 Sverige AB. The content of the agreement may be relevant in order for the authority to be able to identify the natural person or persons who have significant influence on the business covered by the agreement which, in turn, is relevant in the examination of whether the company may be deemed suitable to engage in retail sales of tobacco products. The agreement may thus constitute necessary information in the examination of the application for a permit conducted by the municipality. The purpose of the municipality's request is such that it may be regarded as reasonable in relation to the inconvenience which it may be deemed to entail for the company.
21. Accordingly, the municipality has grounds for its decision to reject the company's application and the appeal is therefore granted.

Justices Jäderblom, Knutsson, Bull, Gäverth and Jönsson have participated in the ruling.

Judge Referee: Lina Hjorth.