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Zondo Commission – Finger pointing at commission over Prasa woes

Former Passenger Rail Agency of South Africa (Prasa) chairperson Popo Molefe has made a proposal before the state capture commission that it consider, when making its recommendations, ensuring that politicians separate themselves from the process of appointing executives of state-owned companies. He was one of three witnesses who appeared on Tuesday on matters relating to Prasa.

Molefe said Prasa went without a permanent group CEO for some time following the departure of Lucky Montana in July 2015 because there was a political conspiracy to reinstate him, despite allegations of widespread corruption under his watch, and the board having gone through a recruitment process to replace him.

“I suppose the role of this commission, as part of the recommendations it would make, is to separate the politicians from the company executives,” said Molefe.

“The deployment committee of the party [ANC] was not intended to determine who the board appoints. Things changed I think in the last 10 years or so. It had always been there to say who amongst us are the best qualified people we would like to encourage to apply for certain positions because they are well trained for it.”

Molefe said he pushed back against Montana’s reinstatement, even when former president Jacob Zuma lobbied for it. He told the commission that although Zuma never formally instructed him or the board to reinstate Montana, he got the impression that he wanted him back at Prasa. This became evident at a meeting called by Zuma at the presidential guest house in Pretoria in August 2015, where it was apparent that Zuma, Montana, then transport minister Dipuo Peters and her colleague in the presidency Jeff Radebe had conspired to try to convince him to take Montana back.

Earlier in the day, Peters had confirmed her presence in the meeting, telling the commission that Zuma’s involvement was at her request, as she had become frustrated over the strained relationship between Montana and Molefe playing itself out in the public domain. But, she added, at no point did Zuma insist on the Prasa board taking Montana back. In fact, the former president was so exhausted that he fell asleep in the middle of the discussion, effectively dissolving the meeting.

Molefe confirmed the last point by Peters, but remained adamant that the agenda for the meeting had been set by the other four participants. “I confirm that he fell asleep. That was after I said to the president I was not going to sit in a meeting of a political party, as a result of which [I would] go back and change the decision of the board, because I didn’t understand what his problem was with the fact that the board had agreed to release Mr Montana,” he said.

Under no circumstances was Montana going to return to Prasa, said Molefe, as there was a wide-ranging investigation launched by the board into allegations of procurement irregularities raised by both the auditor-general and the public protector. These happened under Montana’s watch, while Prasa had seen growing irregular expenditure pointed out by the auditor-general.

The circumstances under which the investigation, done by Werksmans Attorneys, came about, were also examined. Evidence leader Advocate Vas Soni said the commission was looking into the legality of the firm's appointment on the instruction of the board, soon after Montana left Prasa. According to Molefe, it was also the reason why his board was dissolved in March 2017 by Peters, because they persisted with the probe, despite the minister's misgivings over Werksmans's appointment as well as the cost of the investigation which stood at over R90-million at the time.

While Werksmans was initially asked to look into major contracts regarding the procurement of locomotives and the modernisation of Prasa's Braamfontein depot by companies Swifambo and Siyangena respectively, Prasa had not gone out to tender. The two contracts were valued at over R2-billion each, and the board wanted to curb the costs related to them. Molefe said the board was satisfied with Werksmans's progress. "That is why very early on, you see that we are already laying complaints in terms of the Precca with the Hawks."

Prasa's former head of legal services Martha Ngoye told the commission that soon after her return at the end of July 2015 from suspension imposed on her by Montana, she was asked by the board to look into the terms of engagement with Werksmans. She was not of the view that the appointment of the firm was irregular, and advised the board as such, despite concerns from the auditor-general. Because Werksmans was on Prasa's legal panel of preferred attorneys, Ngoye could find no conflict in their appointment.

"When we looked at it we thought there was nothing untoward about the appointment, because how we understood the panel to be utilised was there would be cases where we approach instructions on the basis of horses for courses," said Ngoye.

"In this particular instance we accepted that it would be one of those where the board had decided that this is what they wanted to do and there's a skills set that sits within Werksmans. So we accepted it on that basis, that is the case. And that's what we had also communicated to the auditor-general in trying to explain why we believed that there ought to not have been a separate tender process for the appointment of Werksmans."

Molefe conceded that the board took the decision to go with Werksmans. "It was the board that took the decision that there was a need for an investigation. The actual appointment was made by the acting group chief executive...he signed the scope of work and the contract."

Another controversy relating to the investigation was the fact that it was run with a high level of confidentiality. Ngoye's team, for instance, would have to travel to the offices of Werksmans to view the progress updates of the investigation, but were not allowed to take any documentation with them.

"It was a clearly sensitive period which meant that if you allowed too many people to have access to investigations it would have meant that the objective of finding the truth was going to be defeated," explained Molefe. "If we had just said let it go to management, who were actually subordinates of Mr Montana at the time.

"That's why you have this anomalous situation where the board that is not operational found itself having to be extraordinarily hands on."

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