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Zondo final report – Zondo wants executive removed from SOE board appointments

Acting Chief Justice Raymond Zondo wants the appointment of boards of state-owned entities (SOEs) and their CEOs to be centralised within a body that is free of political influence and is not bound by decisions of the executive.

He makes this assertion at the end of the section of his second report – released to the public earlier this month – that deals with evidence related to ailing arms manufacturer Denel. The Denel board that took office in September 2015, chaired by attorney Daniel Mantsha, was part of the focus of the state capture commission chaired by Zondo.

“The appointment of members of boards of directors and chief executive officers for state-owned entities is a matter of serious concern. The evidence heard by the commission regarding not just Denel but also other SOEs has revealed that the executive very often failed to appoint the right kind of people in these positions in SOEs,” Zondo concludes in the report.

According to him, Mantsha should never have been appointed to the board of a state institution, let alone chair it, given his relationship with the Gupta family, and the fact that he had been struck off the roll of attorneys for several years since 2001. Mantsha denied during his testimony that he did any bidding for the Guptas during his term, saying he was being victimised by the commission.

But Zondo concluded that Mantsha was placed strategically to help the Guptas gain entry into Denel. This, he says, is evidenced in the multi-million-rand contracts that were irregularly awarded to VR Laser, a company that had recently come under the directorship of close Gupta associate Salim Essa. Of particular interest to Zondo is an early October 2015 trip with the Guptas to Dubai, which Mantsha has defended, saying it had nothing to do with Denel business. Zondo disagrees: “the conclusion is irresistible: the overseas travel was a quid pro quo for Mr Mantsha’s services in effecting the capture of Denel.”

For the situation that Denel found itself in, with an errant board, Zondo puts fault squarely at the door of the public enterprises minister at the time of the board’s appointment – Lynne Brown – whom, he writes, failed in her duty to conduct a basic background check on Mantsha. Brown revealed during her own testimony that she only learned of Mantsha being struck off the roll after his appointment. But this statement Zondo finds incredible, as he cites the evidence of one of the deputy directors-general (DDGs) within the Department of Public Enterprises at the time, Kgathatso Tlhakudi, that Brown deliberately excluded officials from her selection process, going against the norm.

“[Minister Brown] testified that she excluded the deputy directors-general such as Mr Tlhakudi from the process as a deliberate act of policy because the DDGs were too close to the decision-makers within the SOEs and their involvement might lead to corruption and DDGs using the connection to obtain more highly remunerated positions within the SOEs themselves.”

One of the first things that the board did upon arrival was to suspend then GCEO Riaz Saloojee, GCFO Fikile Mhlontlo and company secretary Elizabeth Africa. The commission probed the circumstances around this move, with Zondo finding that the suspensions were irregular and manufactured in order to remove the three.

This, he concludes in the report, was done because the executives would have likely deterred the planned capture of Denel by the Guptas through VR Laser. Saloojee testified that Essa, an apparent facilitator of the Guptas' government business, had approached him with a request that he introduce Saloojee to his business partners. When Saloojee realised that Essa was referring to the Guptas, he exercised caution and referred him instead to Denel's head of business development, Zwelakhe Ntshepe.

But this did not stop the advances from the family and Essa, and at one point Mantsha organised a meeting between himself, Saloojee and Essa at the Gupta home in Saxonwold, in which they made a proposal for the family to purchase a subsidiary of Denel. Saloojee told the commission that he found the set-up inappropriate, but Mantsha later denied that he called the meeting to influence Saloojee's views. He instead said it was Saloojee who had an inappropriate relationship with the family.

This was not the first time, however, that Saloojee had been called to a meeting at the Gupta home. The first, soon after his appointment in early 2012, introduced him to the then minister, Brown's predecessor Malusi Gigaba. Zondo notes that each meeting appeared to be a demonstration to Saloojee that the Guptas had power and influence.

"Mr Saloojee testified that minister Gigaba used the position of authority conferred upon him by his office and his status as Mr Saloojee's ultimate superior to solicit SOEs for business for his 'friends'. Minister Gigaba's conduct in doing so will call for strong censure. Such conduct violates the Constitution, which requires public powers to be exercised bona fide and for proper purpose."

There is no record of Brown facilitating such a meeting with the Guptas, but Zondo is clear about her intentions when Saloojee pleaded for her intervention after the suspensions. He wrote to Brown, asking that she look into the board's process in delaying a disciplinary enquiry for himself and his colleagues, which would give them an opportunity to defend themselves.

In response to his request, Brown said she could not intervene as it would be deemed interference. To this point Zondo compares her position in the Denel matter and the one she took months earlier regarding a similar occurrence at Eskom. There too the board had suspended four executives, citing a need to institute an enquiry into their fitness for office. Brown became involved in that process to the point where she instructed the board on which executives to suspend.

Zondo notes, on Brown's conduct: "Although she may seem to have acted inconsistently, in each case she acted consistently with the wishes of the Guptas. In Eskom the Guptas wanted to have executives suspended, and she went along. In Denel the Guptas were behind the suspension of the executives and she went along."

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