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Zondo final report – Eskom capture scheme cooked up long before controversial contracts

Eskom has to date lost over R14-billion due to state capture, according to the latest instalment of the report of the commission of inquiry into state capture. The report was released last Friday by chairperson, Chief Justice Raymond Zondo.

The figure, he says, is supported by the evidence gathered through a forensic investigation commissioned by the inquiry, that falls under its Flow of Funds category of evidence. Two of Eskom's major contracts, namely the master services agreement (MSA) and the corporate plan - both led by international consultancy McKinsey and Company - as well as dodgy coal supply contracts awarded to Gupta-linked company Tegeta Resources, constitute part of the loss.

"In total, R14.7-billion of Eskom's contracts are calculated to have been afflicted by state capture according to the Flow of Funds investigation and, of this, McKinsey's MSA and corporate plan contracts account for R1.1-billion, and related payments to Trillian account for R595.2-million from these two contracts," Zondo notes in the report.

In 2015 Eskom went into business with McKinsey, on the basis of unsolicited proposals, as part of a turnaround strategy that followed the arrival of Brian Molefe as CEO in April of that year. Much of the commission's hearings into the power utility focused on the two contracts. While the MSA was meant to bolster Eskom's engineering capacity through a training programme for engineering staff, the corporate plan was geared more towards redefining its financial strategy to "unlock" funding opportunities.

But neither project was founded in good faith, says Zondo, and both were instead engineered with the sole purpose of advancing the capture of Eskom by the Gupta family through entities affiliated with them, namely Regiments Capital and later, its offshoot Trillian Capital.

Zondo found that without the co-operation of Molefe as CEO, Anoj Singh as CFO and former head of energy generation Matshela Koko, McKinsey, Regiments and Trillian would not have benefited from their capture of Eskom.

Gupta associate Salim Essa was a director of Regiments at the time that the company was sub-contracted by McKinsey for the MSA, and positioned as McKinsey's development partner. He and a number of other executives of the company later left Regiments to form Trillian, which claimed the development partner role under the already-in-place sub-contracting arrangement of McKinsey and Regiments.

On the approval of Singh in April 2016, Trillian would later be paid just over R30-million in circumstances that Zondo found to warrant further investigation, for the sub-contractor work for which Regiments had been appointed. Zondo questions in his report the legitimacy of the payment, given that it was made by Eskom directly to Trillian, despite there not being a contract between the two entities. For his part in it, he recommends that Singh be investigated with the potential of being prosecuted.

Part of the controversy regarding both the MSA and the corporate plan is that both companies (Regiments and Trillian) were brought into the picture as sub-contractors without Eskom's official due diligence or approval. Furthermore, Eskom had not sought the approval of National Treasury, as required, to appoint McKinsey as a single-source contractor.

Zondo's conclusion on this basis is that even prior to Molefe and Singh conducting a needs analysis for the power utility upon arrival in April and August 2015 respectively, there was already an arrangement being made with McKinsey for the company to be appointed for the two projects. The lack of due diligence in the in-sourcing of Regiments was because it was always going to be part of the broader scheme.

He notes: "Messrs Singh, Molefe and Koko were all central to the origin and furtherance of a scheme at Eskom, designed to exploit Eskom and benefit Mr Salim Essa's company, Trillian. The so-called 'on-boarding' meetings McKinsey and Regiments had with Messrs Singh and Molefe, from May 2015, just shortly after Mr Brian Molefe's arrival at Eskom but not long before Mr Anoj Singh could be seconded to Eskom, presented key moments at which the scheme was conceived and hatched, based on the McKinsey/Regiments model of operation at Transnet with which both Mr Anoj Singh and Mr Brian Molefe were very much familiar."

Zondo goes on to note that Molefe, Singh and Koko "all benefited from the Guptas and/or Mr Salim Essa in various forms, with Messrs Koko and Singh from an Eskom perspective and Mr Brian Molefe as already covered in other reports [relating to Transnet evidence].

"This may have constituted the criminal offence of corruption. The conduct of Eskom officials, therefore, implicated several provisions of the commission's terms of references, namely ToR 1,ToR 4, ToR 5 and possibly ToR 6 (corrupt and irregular awarding of contracts to benefit the Gupta family or their associates) and ToR 9 (corruption to benefit the officials involved)."

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